OFFICIAL CODE OF GEORGIA ANNOTATED

2012 Supplement

Including Acts of the 2012 Regular Session of the General Assembly

Prepared by

The Code Revision Commission

The Office of Legislative Counsel

and

The Editorial Staff of LexisNexis®

Published Under Authority of the State of Georgia

Volume 9

2002 Edition

Title 11. Commercial Code

Including Annotations to the Georgia Reports
and the Georgia Appeals Reports

Place in Pocket of Corresponding Volume of Main Set

LexisNexis®
Charlottesville, Virginia

ISBN 978-0-327-11074-3 (set)
ISBN 978-0-327-01806-3

5012929

(Pub.41805)

THIS SUPPLEMENT CONTAINS

Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2012 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through March 30, 2012. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through March 30, 2012.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Sixth Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2012 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2012 supplement pamphlets and in the bound volumes of the Code.

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TITLE 11

COMMERCIAL CODE

ARTICLE 1

GENERAL PROVISIONS

PART 1

SHORT TITLE, CONSTRUCTION, APPLICATION, AND SUBJECT MATTER OF TITLE

11-1-101. Short title.

JUDICIAL DECISIONS

Cited in AgriCommodities, Inc. v. J. D. Heiskell & Co., 297 Ga. App. 210, 676 S.E.2d 847 (2009).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 1:1.

11-1-102. Purposes; rules of construction; variation by agreement.

JUDICIAL DECISIONS

Cited in Dalton Point, L.P. v. Regions Bank, Inc., 287 Ga. App. 468, 651 S.E.2d 549 (2007); Ole Mexican Foods, Inc. v. Hanson Staple Co., 285 Ga. 288, 676 S.E.2d 169 (2009).

11-1-103. Supplementary general principles of law applicable.

JUDICIAL DECISIONS

Cited in Dudley v. Wachovia Bank, N.A., 290 Ga. App. 220, 659 S.E.2d 658 (2008).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 8C Am. Jur. Pleading and Practice Forms, Duress and Undue Influence, § 1.

PART 2

GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

11-1-201. General definitions.

Subject to additional definitions contained in the subsequent articles of this title which are applicable to specific articles or parts thereof, and unless the context otherwise requires, in this title:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this title (Code Sections 11-1-205 and 11-2-208). Whether an agreement has legal consequences is determined by the provisions of this title, if applicable; otherwise by the law of contracts (Code Section 11-1-103).

(4) "Bank" means any person engaged in the business of banking. Wherever the word "branch" is used in this title, with reference to a bank, it shall mean "branch office" as that term is defined in Code Section 7-1-600.

(5) "Bearer" means a person in control of a negotiable electronic document of title or a person in possession of an instrument, a negotiable tangible document of title, or a certificated security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in the ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 of this title may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.

(10) "Conspicuous," with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. Conspicuous terms include the following:

(A) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surround-

ing text of the same size by symbols or other marks that call attention to the language.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this title and any other applicable rules of law.

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to an electronic document of title means voluntary transfer of control and with respect to instruments, tangible documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) "Document of title" means a record (a) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers and (b) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

(16) "Fault" means wrongful act, omission, or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this title to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" means:

(a) The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;

(b) The person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(c) The person in control of a negotiable electronic document of title.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations.

(25) Subject to subsection (27) of this Code section, a person has "notice" of a fact if the person:

(a) Has actual knowledge of it;

(b) Has received a notice or notification of it; or

(c) From all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when the person has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this title.

(26) A person "notifies" or "gives" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it. Subject to subsection (27) of this Code section, a person "receives" a notice or notification when:

(a) It comes to that person's attention; or

(b) It is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(27) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event, from the time when it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party," as distinct from "third party," means a person who has engaged in a transaction or made an agreement within this title.

(30) "Person" includes an individual or an organization (see Code Section 11-1-102).

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(31.1) "Public sale" means a sale:

(A) Held at a place reasonably available to persons who might desire to attend and submit bids; and

(B) At which those attending shall be given the opportunity to bid on a competitive basis; and

(C) At which the sale, if made, shall be made to the highest and best bidder; and

(D) Except as otherwise provided in this title for advertising or dispensing with the advertising of public sales, of which notice is given by advertisement once a week for two weeks in the newspaper in which the sheriff's advertisements are published in the county where the sale is to be held, and which notice shall state the

day and hour, between 10:00 A.M. and 4:00 P.M., and the place of sale and shall briefly identify the goods to be sold.

The provisions of this paragraph shall not be in derogation of any additional requirements relating to notice of and conduct of any such public sale as may be contained in other provisions of this title but shall be supplementary thereto.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The term also includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9 of this title. The special property interest of a buyer of goods on identification of those goods to a contract for sale under Code Section 11-2-401 is not a "security interest," but a buyer may also acquire a "security interest" by complying with Article 9 of this title. Except as otherwise provided in Code Section 11-2-505, the right of a seller or lessor of goods under Article 2 or 2A of this title to retain or acquire possession of the goods is not a "security interest," but a seller or lessor may also acquire a "security interest" by complying with Article 9 of this title. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (Code Section 11-2-401) is limited in effect to a reservation of a "security interest."

Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee, and

(a) The original term of the lease is equal to or greater than the remaining economic life of the goods,

(b) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods,

(c) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement, or

(d) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

A transaction does not create a security interest merely because it provides that

(a) The present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into,

(b) The lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods,

(c) The lessee has an option to renew the lease or to become the owner of the goods,

(d) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed, or

(e) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

For purposes of this subsection (37):

(x) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(y) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(z) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(38) "Send" in connection with a writing, record, or notice means:

(a) To deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or

(b) In any other way to cause to be received any record or notice within the time it would have arrived if properly sent.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature means one made without actual, implied, or apparent authority and includes a forgery.

(44) "Value": Except as otherwise provided with respect to negotiable instruments and bank collections (Code Sections 11-3-303, 11-4-208, and 11-4-209) a person gives "value" for rights if he acquires them:

(a) In return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) As security for or in total or partial satisfaction of a preexisting claim; or

(c) By accepting delivery pursuant to a preexisting contract for purchase; or

(d) Generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a document of title issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting, or any other intentional reduction to tangible form. (Code 1933, § 109A-1—201, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 1963, p. 188, § 1; Ga. L. 1978, p. 1081, §§ 3, 4; Ga. L. 1981, p. 634, § 2; Ga. L. 1985, p. 825, § 1; Ga. L. 1992, p. 6, § 11; Ga. L. 1992, p. 2626, § 1; Ga. L. 1993, p. 633, § 3; Ga. L. 1996, p. 1306, § 1; Ga. L. 2000, p. 136, § 11; Ga. L. 2001, p. 362, § 3; Ga. L. 2010, p. 481, § 2-1/HB 451.)

The 2010 amendment, effective May 27, 2010, in subsection (5), substituted "a person in control of a negotiable electronic document of title or" for "the" near the beginning, inserted "a negotiable tangible", and inserted "a"; substituted the present provisions of subsection (6) for the former provisions, which read: "'Bill of lading' means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. 'Airbill' means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill."; rewrote subsection (10); substituted "to an electronic document of title means voluntary transfer of control and with respect to instruments, tangible" for "to instruments," in the middle of subsection (14); rewrote subsections (15), (20), (25), and (26); in subsection (27), substituted "the individual's" for "his" near the end of the first sentence and added the last two sentences; in subsection (38), substituted "a writing, a record, or notice means:" for "any writing or notice means" at the end of the introductory paragraph, designated the paragraphs, in paragraph (38)(a), inserted commas throughout, substituted "To deposit" for "to deposit" at the beginning and substituted "; or" for a period at the end, and, in paragraph (38)(b), substituted "In any other way to cause to be received any record" for "The receipt of any writing" at the beginning, deleted "at which" following "time" in the middle, and deleted "has the effect of a proper sending" following "properly" at the end; and substituted "document of title" for "receipt" in the middle of subsection (45). See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

JUDICIAL DECISIONS

Analysis

General Consideration

Cited in Gerber & Gerber, P.C. v. Regions Bank, 266 Ga. App. 8, 596 S.E.2d 174 (2004); Stein v. GEICO Indem. Ins. Co., 289 Ga. App. 739, 658 S.E.2d 153 (2008); In re Estate of Miraglia, 290 Ga. App. 28, 658 S.E.2d 777 (2008).

Buyer in Ordinary Course of Business

Fractionalizing not permitted. — Fractionalizing was not allowed by O.C.G.A. § 11-1-201(9) to permit labeling a transferee a buyer in the ordinary course of business to the extent that the purchase price was not in satisfaction of a money debt, but not a buyer in the ordinary course of business to the extent that the purchase price was in satisfaction of a money debt. First Nat'l Bank v. Proceeding Ayres Aviation Holdings, Inc. (In re Ayres Aviation Holdings, Inc.), 342 B.R. 104 (Bankr. M.D. Ga. 2006).

Because plaintiff cellular telephone trademark holder's packages contained terms and conditions inside and language on the outside of the packages that referenced those terms and conditions, there was a valid "shrink-wrap" contract between the holder and purchasers of the cell phones, and allegations that defendant competitor removed the phones from their original packaging and shipped the phones outside the United States sufficiently raised a reasonable expectation that discovery would reveal evidence that the competitor was aware of the terms and conditions, was afforded an opportunity to reject the terms and conditions, and failed to reject the terms and conditions, such that a breach of contract claim was plausible, and, because the allegations indicated a lack of good faith by the competitor, the bona fide purchaser for value and buyer in the ordinary course defenses under O.C.G.A. §§ 11-1-201 and 11-2-403(1)(a) were not available. Tracfone Wireless, Inc. v. Zip Wireless Prods., 716 F. Supp. 2d 1275 (N.D. Ga. 2010).

Conspicuous Term or Clause

Notice conspicuous. — Limitation of liability language on a directory advertising order that appeared in all capital letters satisfied O.C.G.A. § 11-1-201(10). Elliott Irrigation Co. v. L. M. Berry & Co., No. 1:03-CV-2776-CC, 2005 U.S. Dist. LEXIS 4573 (N.D. Ga. Mar. 14, 2005).

Statement of payment in full conspicuous. — Deposit of a check constituted an accord and satisfaction under O.C.G.A. § 11-3-311 of a settlement agreement in a debt dispute as a dispute under O.C.G.A. § 13-4-103(b)(1) existed as to the fee portion of the settlement and the letter sent with the check contained a conspicuous statement under O.C.G.A. § 11-1-201(10) that the tender of the check was full payment and satisfaction of the settlement. Blitch v. Walker Pharm., 295 Ga. App. 347, 671 S.E.2d 842 (2008).

Holder

Possession. — Although the corporation met the requirements for being a holder in due course to the extent that it took the promissory note regarding the mortgage for value, in good faith, and without notice of any claim to the instrument, the corporation was not a holder in due course because it was not in possession of the promissory note at the time it purchased the mortgage; since it was not in possession, it failed to achieve holder-in-due-course status and the bank's security interest prevailed. Provident Bank v. Morequity, Inc., 262 Ga. App. 331, 585 S.E.2d 625 (2003).

Payee of a check who never received possession of the check and who was unaware that the check had been made out to the payee was not a "holder" of the check. Jenkins v. Wachovia Bank, Nat'l Ass'n, 309 Ga. App. 562, 711 S.E.2d 80 (2011).

Notice

Knowledge refers to actual knowledge.

Shortly after a bank made a loan to a farmer, it mailed a cotton gin written notice of its security interest in the farmer's cotton crop. As the gin's president admitted reading the bank's letter, the gin had "actual knowledge" of the bank's security interest under O.C.G.A. § 11-1-201(25), (27), despite the president's claim that no documentation had been enclosed with the letter. Bank of Dawson v. Worth Gin Co., 295 Ga. App. 256, 671 S.E.2d 279 (2008).

Notice not required. — Lessor was not required to comply with the notice provisions of O.C.G.A. §§ 10-1-36 and 11-9-504 because the motor vehicle lease agreement the lessor entered into with the lessee was intended to be a true lease and not to evince a secured transaction; the lessor retained a meaningful reversionary interest in the car because the option price was more than nominal since the purchase option price was approximately one-third of the car's value, and the agreement contained no provision purporting to grant the lessee equity in the vehicle prior to exercise of the purchase option. Aniebue v. Jaguar Credit Corp., 308 Ga. App. 1, 708 S.E.2d 4 (2011).

Security Interest

Lease not a security agreement. — In a Chapter 13 bankruptcy, in which an automobile lease required the debtor to surrender possession of vehicle at the end of the lease, unless the debtor exercised the debtor's option to purchase vehicle, and the debtor was not required to purchase the vehicle or renew the lease, and the debtor could not purchase the vehicle at the end of the lease for a nominal amount—rather, the end-of-lease purchase price exceeded the market value of the vehicle at that point—pursuant to O.C.G.A. § 11-1-201(37) (2002), the lease was a true lease, not a security agreement, and the debtor, thus, had to assume the lease or surrender the vehicle, rather than paying the lessor's claim in accordance with 11 U.S.C. § 1325(a)(5). Freeway Auto Credit v. Bonner (In re Bonner), No. 06-50472 RFH, 2006 Bankr. LEXIS 1497 (Bankr. M.D. Ga. July 19, 2006).

Summary judgment premature without Bright-Line test. — Trial court erred in entering summary judgment for a lessor without addressing whether the parties' contract for a car was a lease or a security agreement under the Bright-Line Test. Coleman v. DaimlerChrysler Servs. of N. Am., LLC, 276 Ga. App. 336, 623 S.E.2d 189 (2005).

Signature

Absence of notary seal. — Jury verdict imposing liability on guarantors for a debt of a corporation was reversed where there was no evidence that the guarantors wrote their names on or otherwise signed the guaranty, where a witness's opinion that the guaranty "appeared" to be executed by the guarantors lacked any basis whatsoever, other than the fact that their names appeared on the signature lines, and where the notary attestation was invalid, if for no other reason, because the guaranty did not contain a notary seal. Friedrich v. APAC-Georgia, Inc., 265 Ga. App. 769, 595 S.E.2d 620 (2004).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Status as "Buyer in Ordinary Course of Business," 2 POF2d 165.

Ratification of Forged or Unauthorized Signature, 7 POF2d 675.

Am. Jur. Pleading and Practice Forms. — 14 Am. Jur. Pleading and Practice Forms, Insolvency, § 2.

11-1-203. Obligation of good faith.

Law reviews. — For article, "Common Fact Patterns of Stock Broker Fraud and Misconduct," see 7 Ga. St. B.J. 14 (2002).

JUDICIAL DECISIONS

No independent cause of action created by O.C.G.A. § 11-1-203. — Inasmuch as a borrower could not prevail on its breach of contract claim against a lender, it could not prevail on a cause of action based on the failure to act in good faith in performing the contract because there was no independent cause of action for breach of duty of good faith in performing a contract governed by the Uniform Commercial Code. Heritage Creek Dev. Corp. v. Colonial Bank, 268 Ga. App. 369, 601 S.E.2d 842 (2004).

Inapplicable to franchise agreement. — Because a franchise agreement primarily governed issues regarding the proper operation of a franchise restaurant, advertising, the use of trademarks, trade names, and service marks, and the provisions regarding goods were incidental at best, the court concluded that non-sale aspects predominated the franchise agreement, and the duty of good faith and fair dealing embodied in O.C.G.A. § 11-1-203 did not apply. Am. Casual Dining, L.P. v. Moe's Southwest Grill, L.L.C., 426 F. Supp. 2d 1356 (N.D. Ga. 2006).

Good faith not violated.

When plaintiff Jobber petroleum distributors' only allegations of wrongdoing was defendant oil company's purported recapture of the cost of a prompt-pay discount when setting its price, and the parties' contract imposed no limits on the costs that could be recouped in setting the price, the good-faith safe harbor provided in O.C.G.A. § 11-2-305(2) applied; O.C.G.A. § 11-2-103 did not support imposing fundamental substantive limitations on the pricing methodology set out in the contract. Autry Petroleum Co. v. BP Prods. North America, Inc., No. 08-11607, 2009 U.S. App. LEXIS 13978 (11th Cir. June 26, 2009) (Unpublished).

11-1-204. Time; reasonable time; "seasonably."

JUDICIAL DECISIONS

One opportunity to cure was unreasonable. — Motor coach buyer's revocation of acceptance claim under O.C.G.A. § 11-2-608(1)(b) failed because the buyer's providing only one opportunity to repair before the extent of the defect was truly apparent was not reasonable under O.C.G.A. § 11-1-204; the futility exception to providing an opportunity to cure did not apply because there was no evidence that the buyer knew prior to revocation that the seller would have been unable to repair the coach. Car Transp. Brokerage Co. v. Blue Bird Body Co., No. 08-16103, 2009 U.S. App. LEXIS 7661 (11th Cir. Apr. 10, 2009) (Unpublished).

Cited in Wal-Mart Stores, Inc. v. Wheeler, 262 Ga. App. 607, 586 S.E.2d 83 (2003).

11-1-205. Course of dealing and usage of trade.

JUDICIAL DECISIONS

Single transaction seven years prior did not show course of dealing. — In a breach of contract and fraud action for unpaid commissions brought by an independent sales representative against a manufacturer, the manufacturer's pay-

ment of continuing commissions in 1995 based on revenues from the sales of paperboard cartons did not establish evidence of a course of dealing between the parties that raised a jury question on whether the independent sales representative was entitled to such commissions following the expiration of a more recent agreement as the single transaction that occurred seven years before the events that formed the basis of the complaint was not evidence of a "sequence of previous conduct" which could fairly be regarded as establishing a common basis of understanding for interpreting the parties' expressions since that incident was simply a one-time negotiated settlement. Irvin Int'l, Inc. v. Riverwood Int'l Corp., 299 Ga. App. 633, 683 S.E.2d 158 (2009).

Course of dealing did not contain quantity or volume requirement. — Under O.C.G.A. § 11-1-205(4), the course of dealing between a contractor a home improvement store did not require the store to provide the contractor with a minimum amount of business each month because the installer agreement requiring the contractor to furnish and install carpeting purchased by the home improvement store's customers did not contain a quantity or volume requirement. Ricciardelli v. Home Depot U.S.A., Inc., No. 08-10756, 2009 U.S. Dist. LEXIS 123344 (DC Jan. 15, 2009).

ARTICLE 2

SALES

Part 1

Short Title, General Construction, and Subject Matter

Sec.

11-2-103. Definitions and index of definitions.

11-2-104. Definitions: "merchant"; "between merchants"; "financing agency."

Part 3

General Obligation and Construction of Contract

11-2-310. Open time for payment or running of credit; authority to ship under reservation.

11-2-323. Form of bill of lading required in overseas shipment; "overseas."

Part 4

Title, Creditors, and Good Faith Purchasers

11-2-401. Passing of title; reservation for security; limited application of this Code section.

Part 5

Performance

11-2-503. Manner of seller's tender of delivery.

11-2-505. Seller's shipment under reservation.

11-2-506. Rights of financing agency.

11-2-509. Risk of loss in the absence of breach.

Part 6

Breach, Repudiation, and Excuse

11-2-605. Waiver of buyer's objections by failure to particularize.

Part 7

Remedies

11-2-705. Seller's stoppage of delivery in transit or otherwise.

Law reviews. — For article, "Rethinking the Commercial Law Treaty," see 45 Ga. L. Rev. 343 (2011).

PART 1

SHORT TITLE, GENERAL CONSTRUCTION, AND SUBJECT MATTER

11-2-101. Short title.

JUDICIAL DECISIONS

Coverage of article.

Article 2 of the Georgia Commercial Code, O.C.G.A. § 11-2-101 et seq., applied to a contract because the sale of goods, the dirt which the seller offered to furnish to the buyer, was the predominant purpose of the contemplated transaction. Furthermore, the trial court did not err in putting the question of predominant purpose to the jury because the evidence permitted a rational jury to resolve this issue in a way that would lead to a conclusion that the sale of goods under O.C.G.A. § 11-2-107(1) was the predominant purpose of the contemplated transaction. Paramount Contr. Co. v. DPS Indus., 309 Ga. App. 113, 709 S.E.2d 288 (2011).

Cited in Jones v. Baran Co., LLC, 290 Ga. App. 578, 660 S.E.2d 420 (2008).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:2.

11-2-102. Scope; certain security and other transactions excluded from this article.

JUDICIAL DECISIONS

Purchase and processing of car skeletons. — Seller's testimony established that the UCC applied to an oral agreement concerning the purchase and processing of car skeletons, as car skeletons or other scrap were considered "goods" under O.C.G.A. § 11-2-102. Henry v. Blankenship, 284 Ga. App. 578, 644 S.E.2d 419 (2007).

Secured transactions. — While it appeared that O.C.G.A. § 9-3-24, rather than O.C.G.A. § 11-2-725, would most likely apply to defendant collection attorney's state court deficiency action against plaintiff consumer, and it was not for the federal court to say what the Georgia courts would hold, the uncertainty meant there was no intentional unfair conduct and the consumer's Fair Debt Collection Practices Act claim was dismissed; language in O.C.G.A. § 11-2-201 excluded "secured transactions" from § 11-2-201. Almand v. Reynolds & Robin, P.C., 485 F. Supp. 2d 1361 (M.D. Ga. 2007).

11-2-103. Definitions and index of definitions.

(1) In this article unless the context otherwise requires:

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(c) "Receipt" of goods means taking physical possession of them.

(d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this article or to specified parts thereof, and the Code sections in which they appear are:

"Acceptance." Code Section 11-2-606.

"Banker's credit." Code Section 11-2-325.

"Between merchants." Code Section 11-2-104.

"Cancellation." Code Section 11-2-106(4).

"Commercial unit." Code Section 11-2-105.

"Confirmed credit." Code Section 11-2-325.

"Conforming to contract." Code Section 11-2-106.

"Contract for sale." Code Section 11-2-106.

"Cover." Code Section 11-2-712.

"Entrusting." Code Section 11-2-403.

"Financing agency." Code Section 11-2-104.

"Future goods." Code Section 11-2-105.

"Goods." Code Section 11-2-105.

"Identification." Code Section 11-2-501.

"Installment contract." Code Section 11-2-612.

"Letter of credit." Code Section 11-2-325.

"Lot." Code Section 11-2-105.

"Merchant." Code Section 11-2-104.

"Overseas." Code Section 11-2-323.

"Person in position of seller." Code Section 11-2-707.

"Present sale." Code Section 11-2-106.

"Sale." Code Section 11-2-106.

"Sale on approval." Code Section 11-2-326.

"Sale or return." Code Section 11-2-326.

"Termination." Code Section 11-2-106.

(3) "Control" as provided in Code Section 11-7-106 and the following definitions in other articles of this title apply to this article:

"Check." Code Section 11-3-104.

"Consignee." Code Section 11-7-102.

"Consignor." Code Section 11-7-102.

"Consumer goods." Code Section 11-9-102.

"Dishonor." Code Section 11-3-502.

"Draft." Code Section 11-3-104.

(4) In addition Article 1 of this title contains general definitions and principles of construction and interpretation applicable throughout this article. (Code 1933, § 109A-2—103, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2001, p. 362, § 4; Ga. L. 2010, p. 481, § 2-2/HB 451.)

The 2010 amendment, effective May 27, 2010, substituted "'Control' as provided in Code Section 11-7-106 and the" for "The" at the beginning of subsection (3). See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

JUDICIAL DECISIONS

"Good Faith."

Motor home seller's renewed motion for judgment as a matter of law was denied because the buyers presented sufficient evidence to support the jury verdict in their favor as to the state law breach of implied warranty claims as the buyers presented evidence showing that they were the real buyers of the motor home even though the legal transaction was done in the name of a corporate entity and the seller could not challenge the buyers' standing to assert breach of warranty claims because the seller assured the buyers that they were covered under the motor home's warranty and that the warranty was being honored; testimony of the seller's service manager, that the buyers were entitled to the benefits of the warranty, was sufficient to establish that they were "buyers" under O.C.G.A. § 11-2-103. Gill v. Bluebird Body Co., No. 5:02-CV-328 (CAR), 2005 U.S. Dist. LEXIS 4611 (M.D. Ga. Jan. 21, 2005).

Consumers, whose O.C.G.A. § 11-2-103 claim for breach of express warranty was unsuccessful, but whose claim for breach of implied warranty of merchantability was successful, were entitled to reasonable attorney's fees based upon a rate that was about average for other consumer law attorneys in Georgia; however, the number of compensable hours was reduced to exclude work done on the unsuccessful claims. Gill v. Bluebird Body Co., 353 F. Supp. 2d 1265 (M.D. Ga. Jan. 28, 2005).

No support for limitations. — When plaintiff Jobber petroleum distributors' only allegations of wrongdoing was defendant oil company's purported recapture of the cost of a prompt-pay discount when setting its price, and the parties' contract imposed no limits on the costs that could be recouped in setting the price, the good-faith safe harbor provided in O.C.G.A. § 11-2-305(2) applied; O.C.G.A. § 11-2-103 did not support imposing fundamental substantive limitations on the pricing methodology set out in the contract. Autry Petroleum Co. v. BP Prods. North America, Inc., No. 08-11607, 2009 U.S. App. LEXIS 13978 (11th Cir. June 26, 2009) (Unpublished).

Cited in Imex Int'l v. Wires Eng'g, 261 Ga. App. 329, 583 S.E.2d 117 (2003).

11-2-104. Definitions: "merchant"; "between merchants"; "financing agency."

(1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(2) "Financing agency" means a bank, finance company, or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (Code Section 11-2-707).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants. (Code 1933, § 109A-2—104, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 2-3/HB 451.)

The 2010 amendment, effective May 27, 2010, inserted "or are associated with" near the end of the first sentence of subsection (2). See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this

Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

JUDICIAL DECISIONS

Attorney fees. — Consumers, whose O.C.G.A. § 11-2-104 claim for breach of implied warranty of merchantability was successful, were entitled to reasonable attorney's fees based upon a rate that was about average for other consumer law attorneys in Georgia; however, the number of compensable hours was reduced to exclude work done on the unsuccessful claims. Gill v. Bluebird Body Co., 353 F. Supp. 2d 1265 (M.D. Ga. Jan. 28, 2005).

Cited in Imex Int'l v. Wires Eng'g, 261 Ga. App. 329, 583 S.E.2d 117 (2003).

11-2-105. Definitions: transferability; "goods"; "future" goods; "lot"; "commercial unit."

RESEARCH REFERENCES

ALR. — What constitutes "future goods" within scope of U.C.C. Article 2, 48 ALR6th 475.

11-2-106. Definitions: "contract"; "agreement"; "contract for sale"; "sale"; "present sale"; "conforming" to contract; "termination"; "cancellation."

JUDICIAL DECISIONS

Analysis

Contract for Sale

Contract for Sale

Buyer as titled owner. — Although a warranty of merchantability was implied in any sale of goods under O.C.G.A. § 11-2-314, the warranty only ran to a buyer in privity of contract with the seller and did not pass to a second or subsequent purchaser; thus, buyers who were not placed on the title and the title transferees had no cause of action against the seller under Georgia law under O.C.G.A. § 11-2-106(1) for breach of implied warranties because of their lack of privity as original purchasers. Gill v. Blue Bird Body Co., No. 05-10466, 2005 U.S. App. LEXIS 11626 (11th Cir. June 17, 2005).

11-2-107. Goods to be severed from realty; recording.

JUDICIAL DECISIONS

Applicability of the Georgia Commercial Code to a contract for dirt. — Article 2 of the Georgia Commercial Code, O.C.G.A. § 11-2-101 et seq., applied to a contract because the sale of goods, the dirt which the seller offered to furnish to the buyer, was the predominant purpose of the contemplated transaction. Furthermore, the trial court did not err in putting the question of predominant purpose to

the jury because the evidence permitted a rational jury to resolve this issue in a way that would lead to a conclusion that the sale of goods under O.C.G.A. § 11-2-107(1) was the predominant purpose of the contemplated transaction. Paramount Contr. Co. v. DPS Indus., 309 Ga. App. 113, 709 S.E.2d 288 (2011).

Dirt was a good. — Dirt was a "good" only if the dirt was severed from the land by the seller, O.C.G.A. § 11-2-107(1), so the separation of fill dirt from the land was a necessary component of the sale of dirt, not the dirt's transportation to a construction site after sale. Paramount Contr. Co. v. DPS Indus., 309 Ga. App. 113, 709 S.E.2d 288 (2011).

PART 2

FORM, FORMATION, AND READJUSTMENT OF CONTRACT

11-2-201. Formal requirements; statute of frauds.

Law reviews. — For survey article on construction law for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 85 (2003). For article, "The Cost of Consent: Optimal Standardization in the Law of Contract," see 58 Emory L.J. 1401 (2009).

JUDICIAL DECISIONS

Analysis

General Consideration
Merchants' Confirmations
Actions

General Consideration

Sufficient evidence that bank was holder of note. — In a bank's suit against the guarantor of a note, the affidavit of the bank's vice-president established that the note was among the bank's business records and in the bank's possession; as such, the bank submitted competent proof that the bank was the holder of the note for purposes of the bank's summary judgment motion. Salahat v. FDIC, 298 Ga. App. 624, 680 S.E.2d 638 (2009).

Merchants' Confirmations

Invoices held to be written confirmation of the contract, etc.

Italian companies that sold goods to a Georgia corporation were not required to obtain a certificate of authority from the State of Georgia prior to doing business in Georgia, and Georgia courts had jurisdiction over actions which the Italian companies filed against the Georgia corporation after they delivered goods, submitted invoices for payment, but were not fully paid. Imex Int'l v. Wires Eng'g, 261 Ga. App. 329, 583 S.E.2d 117 (2003).

Preprinted "limited warranty" language. — Under O.C.G.A. § 13-2-2(7), preprinted "limited warranty" language on the back of a confirmation had no effect because it directly contradicted the full warranty language that was typed on the front of the preprinted confirmation form; the court erred when it relied on this warranty to bar claims for lost profits or other special damages. Authentic Architectural Millworks, Inc. v. SCM Group USA, Inc., 262 Ga. App. 826, 586 S.E.2d 726 (2003).

Deposition testimony of merchant's representative sufficient to form oral agreement. — When a car dealer admitted that a contract existed for the sale of a specific quantity of goods, namely, one vehicle, via the dealer's representative's deposition, but on different terms and conditions than those alleged by the car's potential buyer, the oral agreement between the parties was enforceable under the exception to the statute of frauds set

forth in O.C.G.A. § 11-2-201(3)(b). Jones v. Baran Co., LLC, 290 Ga. App. 578, 660 S.E.2d 420 (2008).

Objection requirements of O.C.G.A. §§ 11-2-201(2), 11-2-202, and 11-2-207 applied to work orders issued by a home improvement store to a contractor for the purchase of carpeting because the contractor's installation service was incidental to the purchase of carpeting by the store's customers. On the other hand, change orders that dealt with services that the contractor was asked to provide over and above the initial installation of the carpeting were not subject to the requirements of the Uniform Commercial Code. Ricciardelli v. Home Depot U.S.A., Inc., No. 08-10756, 2009 U.S. Dist. LEXIS 123344 (DC Jan. 15, 2009).

Actions

Failure to object to goods constituted acceptance and formed contract. — Under the merchant rule in O.C.G.A. § 11-2-201(2), a hospital's failure to object in writing to a medical supplier's invoice for pumps within ten days of receipt constituted the hospital's acceptance of the goods and formed an enforceable contract, even though the hospital's purchase order noted that the purchase was contingent on approval by the hospital's board of directors. Ardus Med., Inc. v. Emanuel County Hosp. Auth., 558 F. Supp. 2d 1301 (S.D. Ga. 2008).

Party admitting contract may not claim benefit of statute of frauds.

An oral agreement for the sale of a horse for $35,000 was enforceable under O.C.G.A. § 11-2-201(3)(b); the seller admitted that a contract was made for the sale of one horse. Rowland v. Scarborough Farms, LLC, 285 Ga. App. 831, 648 S.E.2d 151 (2007).

Secured transactions. — While it appeared that O.C.G.A. § 9-3-24, rather than O.C.G.A. § 11-2-725, would most likely apply to defendant collection attorney's state court deficiency action against plaintiff consumer, and it was not for the federal court to say what the Georgia courts would hold, the uncertainty meant there was no intentional unfair conduct and the consumer's Fair Debt Collection Practices Act claim was dismissed; language in O.C.G.A. § 11-2-201 excluded "secured transactions" from § 11-2-201. Almand v. Reynolds & Robin, P.C., 485 F. Supp. 2d 1361 (M.D. Ga. 2007).

Summary judgment. — Lender and attorney were properly granted summary judgment against a home buyer's breach of contract, fraud, and conspiracy claims, as: (1) there was no evidence of a written purchase agreement for the home and the land it was placed on; and (2) a simple reading of the contract by the buyer would have protected against any alleged misrepresentations; moreover, to the extent that the home buyer's claim of a conspiracy depended upon the viability of the fraud and breach of contract claims, it also failed. Parrish v. Jackson W. Jones, P.C., 278 Ga. App. 645, 629 S.E.2d 468 (2006).

Because an oral contract concerning the disposal of car skeletons on property operated as a junkyard did not violate the O.C.G.A. §§ 11-2-201 and 11-2-725, the trial court erred in granting summary judgment against a seller on his counterclaim for fraud, due to the option holder's repudiation of the contract in filing for specific performance. Henry v. Blankenship, 284 Ga. App. 578, 644 S.E.2d 419 (2007).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:11.

ALR. — Satisfaction of statute of frauds by e-mail, 110 ALR5th 277.

11-2-202. Final written expression; parol or extrinsic evidence.

JUDICIAL DECISIONS

ANALYSIS

CONSTRUCTION AND APPLICATION
PROCEDURE

Construction and Application

Actual agreement not contained in one document. — Trial court correctly considered matters outside a buyer's request for quotation (RFQ) to determine the intended final obligations of the buyer and a seller under their agreement because the evidence supported the trial court's finding that the parties' actual agreement was not contained in any one document, such as the RFQ, since the RFQ anticipated that necessary terms such as material specifications, quantities, pricing information, and delivery dates would be supplied as part of the bidding and ordering process; because before, during, and after accepting the seller's bid, the buyer was aware of the seller's overseas supply chain and did not object to the seller's stated reliance on a promised three-month forecast to obtain material, the trial court did not err in construing the written terms of the contract in light of that understanding and thereby denying the buyer cover damages for items exceeding the usage data provided to the seller. Scovill Fasteners, Inc. v. Northern Metals, Inc., 303 Ga. App. 246, 692 S.E.2d 840 (2010).

Parol evidence admissible if no final sales price. — Where written contracts were not intended by the parties as a complete and exclusive statement of the agreed upon terms, because only a floor price, rather than the final sales price, was stated, parol evidence as to the parties' prescribed method for fixing the final price was admissible. Golden Peanut Co. v. Bass, 275 Ga. 145, 563 S.E.2d 116 (2002), cert. denied, 537 U.S. 886, 123 S. Ct. 32, 154 L. Ed. 2d 146 (2002).

Procedure

Objection requirements of O.C.G.A. §§ 11-2-201(2), 11-2-202, and 11-2-207 applied to work orders issued by a home improvement store to a contractor for the purchase of carpeting because the contractor's installation service was incidental to the purchase of carpeting by the store's customers. On the other hand, change orders that dealt with services that the contractor was asked to provide over and above the initial installation of the carpeting were not subject to the requirements of the Uniform Commercial Code. Ricciardelli v. Home Depot U.S.A., Inc., No. 08-10756, 2009 U.S. Dist. LEXIS 123344 (DC Jan. 15, 2009).

11-2-204. Formation in general.

JUDICIAL DECISIONS

Formalities required for contract formation reduced.

In a case in which a steel company signed a purchase order from a general contractor after it had rejected the terms of the purchase order and had submitted a counter-offer to the general contractor, a district court, in granting summary judgment in favor of the general contractor, correctly concluded that the record evidence disclosed no material fact in dispute; no reasonable jury could find that the general contractor and the steel company agreed to terms of a steel supply contract for the construction project. The requirement for a meeting of the minds necessary under O.C.G.A. § 13-3-2 had not been met, and there was no agreement between the parties under O.C.G.A. § 11-2-204. South Cent. Steel, Inc. v.

McKnight Constr. Co., No. 07-11292, 2008 U.S. App. LEXIS 1771 (11th Cir. Jan. 25, 2008) (Unpublished).

No meeting of the minds or mutuality established. — In a cottonseed buyer's suit for breach of contract against a cottonseed seller, the trial court properly granted summary judgment to the seller as no mutuality as to the contract terms existed since the buyer never obtained credit approval. Further, the buyer's reliance on the purported promise was unreasonable as a matter of law; thus, promissory estoppel did not apply as the buyer never received credit approval, which was an essential element of the cottonseed business. AgriCommodities, Inc. v. J. D. Heiskell & Co., 297 Ga. App. 210, 676 S.E.2d 847 (2009).

Valid, enforceable contract.

When a car dealer admitted that a contract existed for the sale of a specific quantity of goods, namely, one vehicle, via the dealer's representative's deposition, but on different terms and conditions than those alleged by the car's potential buyer, the oral agreement between the parties was enforceable under the exception to the statute of frauds set forth in O.C.G.A. § 11-2-201(3)(b). Jones v. Baran Co., LLC, 290 Ga. App. 578, 660 S.E.2d 420 (2008).

Under O.C.G.A. § 11-2-204(3), a contract between a hospital and medical supplier consisting of a contingency-based purchase order and an invoice did not fail for indefiniteness because, by the deliverance of the goods and the acceptance of the goods without protest in writing within ten days of receipt, the parties were deemed to have agreed upon quantity and price terms. Ardus Med., Inc. v. Emanuel County Hosp. Auth., 558 F. Supp. 2d 1301 (S.D. Ga. 2008).

11-2-207. Additional terms in acceptance or confirmation.

JUDICIAL DECISIONS

Objection requirements of O.C.G.A. §§ 11-2-201(2), 11-2-202, and 11-2-207 applied to work orders issued by a home improvement store to a contractor for the purchase of carpeting because the contractor's installation service was incidental to the purchase of carpeting by the store's customers. On the other hand, change orders that dealt with services that the contractor was asked to provide over and above the initial installation of the carpeting were not subject to the requirements of the Uniform Commercial Code. Ricciardelli v. Home Depot U.S.A., Inc., No. 08-10756, 2009 U.S. Dist. LEXIS 123344 (DC Jan. 15, 2009).

11-2-208. Course of performance or practical construction.

JUDICIAL DECISIONS

Actual agreement not contained in one document. — Trial court correctly considered matters outside a buyer's request for quotation (RFQ) to determine the intended final obligations of the buyer and a seller under their agreement because the evidence supported the trial court's finding that the parties' actual agreement was not contained in any one document, such as the RFQ, since the RFQ anticipated that necessary terms such as material specifications, quantities, pricing information, and delivery dates would be supplied as part of the bidding and ordering process; because before, during, and after accepting the seller's bid, the buyer was aware of the seller's overseas supply chain and did not object to the seller's stated reliance on a promised three-month forecast to obtain material, the trial court did not err in construing the written terms of the contract in light of that understanding and thereby denying the buyer cover damages for items exceeding the usage data provided to the seller. Scovill Fasteners, Inc. v. Northern Metals, Inc., 303 Ga. App. 246, 692 S.E.2d 840 (2010).

11-2-210. Delegation of performance; assignment of rights.

JUDICIAL DECISIONS

Claim for breach of warranty is assignable.

While a warranty cannot be assigned, the Uniform Commercial Code, O.C.G.A. § 11-1-101 et seq., does authorize the assignment of a purchaser's claim for an existing breach of the warranty—this assignment of the purchaser's claim, indeed, is expressly authorized by O.C.G.A. § 11-2-210(2)—any language, however informal, will be sufficient to constitute a legal assignment, if it shows the intention of the owner of the right to transfer it instantly, so that it will be the property of the transferee. Plaintiff's subrogation receipts clearly constituted sufficient evidence of a legal assignment of the implied warranty claim. Kraft Reinsurance Ir., Ltd. v. Pallets Acquisitions, LLC, No. 1:09-CV-3531-AT, 2011 U.S. Dist. LEXIS 131308 (N.D. Ga. Sept. 30, 2011).

Repudiation of subcontract. — Trial court could not have properly granted summary judgment against a general contractor by reason of its apparent acquiescence in a subcontractor's breach of the subcontract by reason of its assignment because the contractor testified that it had a substantial interest in maintaining the subcontractor as the performer of the subcontract under O.C.G.A. § 11-2-210(1), and that it looked for, but was unable to retain, any other asphalt provider besides the assignee; the subcontractor could not prevail on summary judgment in the wake of its repudiation of the subcontract, including the provision not to delegate performance. Western Sur. Co. v. APAC-Southeast, Inc., 302 Ga. App. 654, 691 S.E.2d 234, cert. denied, No. S10C1140, 2010 Ga. LEXIS 673 (Ga. 2010).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:75.

PART 3

GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

11-2-302. Unconscionable contract or clause.

Law reviews. — For article, "Giving Unconscionability More Muscle: Attorney's Fees as a Remedy for Contractual Overreaching," see 44 Ga. L. Rev. 317 (2010).

JUDICIAL DECISIONS

ANALYSIS

APPLICATION

Application

Bank charges not unconscionable. — While plaintiff bank customers alleged defendant bank had a practice of manipulating the posting of transactions to impose overdraft fees, there was no substantive unconscionability under O.C.G.A.

§ 11-2-302 as the deposit agreement was consistent with O.C.G.A. § 11-4-303(b) as to the order items were paid. White v. Wachovia Bank, N.A., 563 F. Supp. 2d 1358 (N.D. Ga. 2008).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:92.

11-2-305. Open price term.

JUDICIAL DECISIONS

Good-faith safe harbor applied in petroleum distribution. — When plaintiff Jobber petroleum distributors' only allegations of wrongdoing was defendant oil company's purported recapture of the cost of a prompt-pay discount when setting its price, and the parties' contract imposed no limits on the costs that could be recouped in setting the price, the good-faith safe harbor provided in O.C.G.A. § 11-2-305(2) applied; O.C.G.A. § 11-2-103 did not support imposing fundamental substantive limitations on the pricing methodology set out in the contract. Autry Petroleum Co. v. BP Prods. North America, Inc., No. 08-11607, 2009 U.S. App. LEXIS 13978 (11th Cir. June 26, 2009) (Unpublished).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:107.

11-2-306. Output, requirements, and exclusive dealings.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:143.

ALR. — Establishment and construction of requirements contracts under § 2-306(1) of Uniform Commercial Code, 94 ALR5th 247.

11-2-309. Absence of specific time provisions; notice of termination.

JUDICIAL DECISIONS

Cited in Club Car, Inc. v. Club Car (Quebec) Import, Inc., 276 F. Supp. 2d 1276 (S.D. Ga. 2003).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:118.

11-2-310. Open time for payment or running of credit; authority to ship under reservation.

Unless otherwise agreed:

(a) Payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) If the seller is authorized to send the goods he or she may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (Code Section 11-2-513); and

(c) If delivery is authorized and made by way of documents of title otherwise than by subsection (b) of this Code section then payment is due regardless of where the goods are to be received (i) at the time and place at which the buyer is to receive delivery of the tangible documents or (ii) at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence; and

(d) Where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period. (Code 1933, § 109A-2—310, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 2-4/HB 451.)

The 2010 amendment, effective May 27, 2010, inserted "or she" near the beginning of paragraph (b); in paragraph (c), inserted "regardless of where the goods are to be received (i)" and substituted "delivery of the tangible documents or (ii) at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence" for "the documents regardless of where the goods are to be received" near the end; and substituted "post-dating" for "postdating" in the middle of paragraph (d). See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

JUDICIAL DECISIONS

Cited in Babbitt v. State, 314 Ga. App. 115, 723 S.E.2d 10 (2012).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:118. 19A Am. Jur. Pleading and Practice Forms, Payment, § 3.

11-2-312. Warranty of title and against infringement; buyer's obligation against infringement.

JUDICIAL DECISIONS

ANALYSIS

BREACH OF WARRANTY

Breach of Warranty

Impleaded claims. — Third-party claims of breach of warranty under O.C.G.A. § 11-2-312(3), and indemnity were proper to implead into a patent infringement case under Fed. R. Civ. P. 14(a) because the essence of the claims were to show that others were liable for any infringement. However, because the claims involved separate areas of law and might be prejudicial or confuse the jury, severance was proper under Fed. R. Civ. P. 42(b). Tillotson Corp. v. Shijiazhaung Hongray Plastic Prods., No. 4:05-CV-0118-RLV, 2006 U.S. Dist. LEXIS 76978 (N.D. Ga. Oct. 23, 2006).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 3 Am. Jur. Pleading and Practice Forms, Automobiles and Highway Traffic, § 66.

11-2-313. Express warranties by affirmation, promise, description, sample.

Law reviews. — For note, "Does the National Childhood Vaccine Injury Compensation Act Really Prohibit Design Defect Claims?: Examining Federal Preemption in Light of American Home Products Corp. v. Ferrari," see 26 Ga. St. U.L. Rev. 617 (2010).

JUDICIAL DECISIONS

Analysis

General Consideration

Express and implied warranties. Trial court erred in denying a corporation's motion for summary judgment on an individual's claim for breach of an express warranty when the individual's three-wheeled motorized scooter tipped over while the individual was operating the scooter in the individual's yard as the individual failed to present any evidence that the scooter was generally unsuitable for use on non-paved and sloped surfaces and, therefore, the individual had not identified any evidence that the scooter did not conform to a salesperson's description. Foothills Pharms., Inc. v. Powers, 313 Ga. App. 630, 722 S.E.2d 331 (2012).

Learned intermediary doctrine. — Plaintiff's breach of warranty claims against a drug manufacturer to the extent the claims were based upon failure to provide accurate or sufficient information regarding the use of the drug to the decedent, were barred by the learned intermediary doctrine, but the claims were not barred to the extent the claims were based upon failure to provide accurate or sufficient information regarding the use of the drug to others. Lee v. Mylan Inc., 806 F. Supp. 2d 1320 (M.D. Ga. Apr. 15, 2011).

Applicability

Statements deemed opinion or commendation.

Seller's opinions as to the working order of electrical components in a motor home and some other issues did not create a warranty. Gill v. Bluebird Wanderlodge & Holland Motor Homes, No. 5:02-CV-328-2(CAR), 2004 U.S. Dist. LEXIS 27436 (M.D. Ga. Feb. 4, 2004).

Privity between manufacturer and ultimate consumer. — To the extent the plaintiff's express warranty claim against a drug manufacturer was based upon affirmations of fact or promises to the decedent, the plaintiff asserted a claim upon which relief could be granted because a manufacturer could extend an express warranty to the ultimate consumer. Lee v. Mylan Inc., 806 F. Supp. 2d 1320 (M.D. Ga. Apr. 15, 2011).

Evidence

Damages. — In a consumer's suit against a car dealer for breach of an express warranty, regarding the sale of a used car which the dealer's salesman falsely represented had not been in a wreck, it was not error for the trial court to grant a directed verdict to the dealer because, while the salesman's representation was an express warranty, under O.C.G.A. § 11-2-313(1)(a), the consumer offered no probative evidence of damages. Mitchell v. Backus Cadillac-Pontiac, Inc., 274 Ga. App. 330, 618 S.E.2d 87 (2005).

Substantial repairs over three-year period. — Trial court erred in entering summary judgment for a manufacturer on the owners' suit for breach of an express warranty where the owners made 22 trips to the dealership for repairs over a three-year period and, despite the replacement of multiple parts and extensive repairs to the vehicle, the problems continued, including: (1) that the check engine light and the fluid light came on; (2) that the radio's sound quality was inconsistent; (3) that there was engine hesitation and jerking; (4) that squeaking occurred on entering and exiting the vehicle; and (5) that the operation of the wiper blades was noisy. Hill v. Mercedes Benz USA, LLC, 274 Ga. App. 826, 619 S.E.2d 353 (2005).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 20A Am. Jur. Pleading and Practice Forms, Products Liability, § 46.

11-2-314. Implied warranty: merchantability; usage of trade.

JUDICIAL DECISIONS

Analysis

General Consideration

Implied warranties inapplicable to settlement agreements. — Seller sued a buyer who rejected the seller's goods; the parties settled. As the parties' agreement was a contract to settle litigation, with any sale of goods merely incidental, the implied warranties of merchantability and fitness, O.C.G.A. §§ 11-2-314 and 11-2-315, did not apply to their settlement agreement. Ole Mexican Foods, Inc. v. Hanson Staple Co., 285 Ga. 288, 676 S.E.2d 169 (2009).

Evidence negated buyer's claim that vehicle was unmerchantable at time of sale. — Summary judgment for the seller of a vehicle was proper in a case in which the buyer claimed breach of implied warranties under O.C.G.A. § 11-2-314; the buyer's complaints were minor and did not render the vehicle unusable, and the vehicle had 57,000 miles on it when the buyer purchased it, and the fact that the buyer drove it 25,000 more miles before abandoning it at the seller's lot negated the claim that the vehicle was unmerchantable when purchased. Soto v. CarMax Auto Superstores, Inc., 271 Ga. App. 813, 611 S.E.2d 108 (2005).

Pharmaceutical products. — Patient who died after taking medicine which a pharmaceutical manufacturer gave to the doctor and which the doctor gave to the patient was not entitled to an extension of any implied warranty existing between the manufacturer and the doctor, and the appellate court upheld the trial court's judgment dismissing claims the patient's spouse filed against the manufacturer, alleging breach of express and implied warranties, but reversed the trial court's judgment dismissing the husband's claims against the manufacturer alleging strict liability and negligent failure to warn. Bryant v. Hoffmann-La Roche, Inc., 262 Ga. App. 401, 585 S.E.2d 723 (2003).

"Learned intermediary" doctrine. Plaintiff's breach of warranty claims against a drug manufacturer, to the extent the claims were based upon failure to provide accurate or sufficient information regarding the use of the drug to the decedent, were barred by the learned intermediary doctrine but the claims were not barred to the extent the claims were based upon failure to provide accurate or sufficient information regarding the use of the drug to others. Lee v. Mylan Inc., 806 F. Supp. 2d 1320 (M.D. Ga. Apr. 15, 2011).

Essential elements not proved. — Proof that the car was defective when sold was an essential element of the buyer's claim, which the buyer did not satisfy; the evidence showed that the buyer drove the used car approximately 26,000 miles before the cooling system began to malfunction. Dildine v. Town & Country Truck Sales, Inc., 259 Ga. App. 732, 577 S.E.2d 882 (2003).

To recover in Georgia under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 et seq., a plaintiff must show that

a defendant breached the implied warranty of merchantability arising under Georgia law, and summary judgment for a car seller in a case alleging breach of implied warranties under 15 U.S.C. § 2301 et seq., and O.C.G.A. § 11-2-314(1) was correct because the buyers failed to show that car was defective when sold; numerous repairs to the car during first year of ownership were mostly for different items each time, and all of the needed repairs were made. Crowe v. CarMax Auto Superstores, Inc., 272 Ga. App. 249, 612 S.E.2d 90 (2005).

Trial court did not err in granting a seller's motion for summary judgment in a customer's action seeking to recover damages for injuries the customer sustained when the customer was burned from a ceramic, scented-oil burner and alleging, among other things, that the seller breached an implied warranty of merchantability because the trial court's conclusion that the ceramic burner was not defective for the burner's ordinary purpose at the time of sale was supported by the evidence of record; the customer presented no evidence that some defect existed in the item such that it was inappropriate to use for the item's ordinary purpose as a ceramic oil burner other than the mere existence of the customer's injury, and the sellers' owners and employees deposed that the item and others like it were marketed by the manufacturer as oil burners and were displayed as such at various trade shows the seller's personnel attended. Rivers v. H. S. Beauty Queen, Inc., 306 Ga. App. 866, 703 S.E.2d 416 (2010).

Cited in Imex Int'l v. Wires Eng'g, 261 Ga. App. 329, 583 S.E.2d 117 (2003).

Torts

Liability for food served. — Trial court erred by granting summary judgment to a restaurant on a customer's claim that the restaurant served the customer a hamburger that breached the implied warranties of merchantability and fitness for purpose when the hamburger contained a bit of bone that broke the customer's tooth when the customer bit into the hamburger. Because this material question had to be decided by a jury, the trial court erred in its grant of summary judgment to the restaurant. Mitchell v. BBB Servs. Co., 261 Ga. App. 240, 582 S.E.2d 470 (2003).

Existence of defect. — In an action in which an insurance company filed suit against a company in a subrogation action to recover money paid by the insurance company to a restaurant in Norcross, Georgia, after a fire destroyed the restaurant, the company's motion for summary judgment was granted on the breach of implied warranty claim; the insurance company proffered no evidence in the record from which a jury could conclude that the defect existed when the power supply left the manufacturing facility or even after it was re-manufactured. Colony Ins. Co. v. Coca-Cola Co., 239 F.R.D. 666 (N.D. Ga. 2007).

Exclusion or Waiver

Waiver must be clear and certain. Because the language "THERE ARE NO ... IMPLIED WARRANTIES WITH RESPECT TO MERCHANTABILITY ... CONCERNING THE VEHICLE, PARTS, OR ACCESSORIES DESCRIBED HEREIN," appeared in bold type and all capital letters in the sales contract, the implied warranty of merchantability was excluded. Gill v. Bluebird Wanderlodge & Holland Motor Homes, No. 5:02-CV-328-2(CAR), 2004 U.S. Dist. LEXIS 27436 (M.D. Ga. Feb. 4, 2004).

Evidentiary Issues

Evidence of defect at time of sale. Trial court erred in granting a manufacturer's summary judgment motion on a buyer's breach of the implied warranty of merchantability claim on a ground not raised in the motion because the manufacturer argued in its motion that the buyer failed to show that the vehicle was defective at the time it was purchased; at the hearing, the manufacturer claimed that the buyer's expert did not establish that the vehicle was unmerchantable under Georgia law. Knight v. Am. Suzuki Motor Corp., 272 Ga. App. 319, 612 S.E.2d 546 (2005).

Trial court erred in entering summary judgment for a manufacturer on the owners' breach of the implied warranty of

merchantability claim as there were triable issues as to the driveability of a car at the time of its delivery where an owner brought the vehicle to the dealership approximately one month after the owner picked it up and had driven only 1,923 miles, and, among other things, there was a recurrant problem with the coolant lamp. Hill v. Mercedes Benz USA, LLC, 274 Ga. App. 826, 619 S.E.2d 353 (2005).

Evidence insufficient to show vehicle not merchantable. — Because there was no evidence that a vehicle's driveability or usefulness was ever affected by alleged defects, and the purchaser did not allege that the vehicle was ever rendered inoperable or that its capacity to operate as a means of transportation was ever disabled by alleged defects, there was no basis for a decision that the vehicle was not merchantable as guaranteed by the implied warranty pursuant to O.C.G.A. § 11-2-314. Hines v. Mercedes-Benz USA, LLC, 358 F. Supp. 2d 1222 (N.D. Ga. 2005).

Defective product.

In a consumer's suit against a car dealer for breach of an implied warranty, under 15 U.S.C. § 2310(d)(1) of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 et seq., regarding the sale of a used car which the dealer's salesman falsely represented had not been in a wreck, it was not error for the trial court to grant a directed verdict to the dealer because the consumer did not show the vehicle was not merchantable, under O.C.G.A. § 11-2-314(1). Mitchell v. Backus Cadillac-Pontiac, Inc., 274 Ga. App. 330, 618 S.E.2d 87 (2005).

Defendant's compliance with plaintiff's specifications did not eliminate the defendant's duty to supply merchantable pallets; as there were genuine issues of material fact regarding plaintiff's claim for breach of the implied warranty of merchantability, summary judgment was inappropriate. Plaintiff's expert testimony indicated that many pallet manufacturers were aware of mold issues caused by surface moisture on green heat-treated wood and, as a result, were drying pallets used for export, however, neither the pallet manufacturing standards nor the heat-treatment standards required any specific moisture content; this conflicting evidence raised a question of fact as to whether pallets with high moisture content were defective and unfit for shipping products overseas. Kraft Reinsurance Ir., Ltd. v. Pallets Acquisitions, LLC, No. 1:09-CV-3531-AT, 2011 U.S. Dist. LEXIS 131308 (N.D. Ga. Sept. 30, 2011).

Privity

Plaintiff must be purchaser.

Although a warranty of merchantability was implied in any sale of goods under O.C.G.A. § 11-2-314, the warranty only ran to a buyer in privity of contract with the seller and did not pass to a second or subsequent purchaser; thus, the buyers who were not placed on the title and title transferees had no cause of action against the seller under Georgia law under O.C.G.A. § 11-2-106(1) for breach of implied warranties because of their lack of privity as original purchasers. Gill v. Blue Bird Body Co., No. 05-10466, 2005 U.S. App. LEXIS 11626 (11th Cir. June 17, 2005).

Legal transaction conducted in name of corporate entity. — Motor home seller's renewed motion for judgment as a matter of law was denied because the buyers presented sufficient evidence to support jury verdict in their favor as to state law breach of implied warranty claim; the buyers presented evidence showing that they were the real buyers of the motor home even though the legal transaction was done in the name of a corporate entity; thus, the seller could not challenge the buyers' standing to assert breach of warranty claims because it assured the buyers that they were covered under the motor home's warranty and that the warranty was being honored. Gill v. Bluebird Body Co., No. 5:02-CV-328 (CAR), 2005 U.S. Dist. LEXIS 4611 (M.D. Ga. Jan. 21, 2005).

Lack of privity between manufacturer and ultimate consumer.

Purchaser did not have a claim for breach of implied warranty against the manufacturers of component parts of the purchaser's recreational vehicle because there was no privity between the manufacturers and the purchaser. Monticello v.

Winnebago Indus., 369 F. Supp. 2d 1350 (N.D. Ga. 2005).

Privity between manufacturer and ultimate consumer. — Because the plaintiff established privity with respect to an express warranty claim against a drug manufacturer based upon affirmations of fact or promises to the decedent, the plaintiff also could bring claims for the implied warranties of merchantability and fitness for a particular purpose. Lee v. Mylan Inc., 806 F. Supp. 2d 1320 (M.D. Ga. Apr. 15, 2011).

Damages

Emotional distress. — Summary judgment, pursuant to O.C.G.A. § 9-11-56(c), to a restaurant was properly granted by a trial court in an action by a restaurant patron, alleging emotional distress when the patron discovered two blood spots on the french fry container, fearing that the patron would contract HIV or hepatitis, because the patron failed to provide evidence of more than the patron's "fear" of exposure to the diseases; accordingly, the patron's claims for negligence, negligence per se, and breach of the implied warranty of merchantability, under O.C.G.A. § 51-1-23 and O.C.G.A. § 11-2-314, failed due to the patron's failure to meet the damages requirement. Wilson v. J & L Melton, Inc., 270 Ga. App. 1, 606 S.E.2d 47 (2004).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, §§ 2:234, 2:260. 20A Am. Jur. Pleading and Practice Forms, Products Liability, § 57.

Am. Jur. Proof of Facts. — Implied Warranty of Merchantability, 26 POF2d 1.

11-2-315. Implied warranty: fitness for particular purpose.

Law reviews. — For note, "Does the National Childhood Vaccine Injury Compensation Act Really Prohibit Design Defect Claims?: Examining Federal Preemption in Light of American Home Products Corp. v. Ferrari," see 26 Ga. St. U.L. Rev. 617 (2010).

JUDICIAL DECISIONS

Analysis

General Consideration
Actions

General Consideration

Implied warranties inapplicable to settlement agreement. — Seller sued a buyer who rejected the seller's goods; the parties settled. As the parties' agreement was a contract to settle litigation, with any sale of goods merely incidental, the implied warranties of merchantability and fitness, O.C.G.A. §§ 11-2-314 and 11-2-315, did not apply to their settlement agreement. Ole Mexican Foods, Inc. v. Hanson Staple Co., 285 Ga. 288, 676 S.E.2d 169 (2009).

Pharmaceutical products. — Patient who died after taking medicine which a pharmaceutical manufacturer gave to the doctor and which the doctor gave to the patient was not entitled to an extension of any implied warranty existing between the manufacturer and the doctor, and the appellate court upheld the trial court's judgment dismissing claims the patient's spouse filed against the manufacturer, alleging breach of express and implied warranties, but reversed the trial court's judgment dismissing the husband's claims against the manufacturer alleging strict liability and negligent failure to warn. Bryant v. Hoffmann-La Roche, Inc., 262 Ga. App. 401, 585 S.E.2d 723 (2003).

Scented oil burner. — Trial court did not err in granting a seller's motion for summary judgment in a customer's action seeking to recover damages for injuries the customer sustained when the customer was burned from a ceramic, scented-oil burner and alleging, among other things, that the seller breached the seller's duty of implied warranty of fitness for a particular purpose because there was no evidence that the seller's employees knew that the customer intended to use the product in any way other than its ordinary purpose, burning scented oil; the customer utilized the ceramic burner for the ordinary purpose for which the item was intended, i.e., using the receptacle on the item to hold scented oil over a burning candle, causing the scent to diffuse throughout the customer's home. Rivers v. H. S. Beauty Queen, Inc., 306 Ga. App. 866, 703 S.E.2d 416 (2010).

Pallets. — It was undisputed that the defendant knew the plaintiff would be using the heat-treated pallets to ship products overseas and it was similarly undisputed that plaintiff specifically requested certain heat-treated pallets and that the pallets supplied by the defendant met these specifications; however, it was also undisputed that the plaintiff did not specify any particular moisture content for the pallets the plaintiff ordered. There was conflicting evidence in the record as to whether the plaintiff requested green or raw wood or whether the defendant decided unilaterally to use green wood; accordingly, as there was a question of fact as to whether the plaintiff relied on the defendant's skill and judgment to supply it with pallets with appropriate moisture content for shipping products overseas in freight containers and whether the defendant failed to do so, summary judgment was inappropriate on the implied warranties claim. Kraft Reinsurance Ir., Ltd. v. Pallets Acquisitions, LLC, No. 1:09-CV-3531-AT, 2011 U.S. Dist. LEXIS 131308 (N.D. Ga. Sept. 30, 2011).

Cited in Imex Int'l v. Wires Eng'g, 261 Ga. App. 329, 583 S.E.2d 117 (2003).

Actions

Privity between manufacturer and ultimate consumer. — Because the plaintiff established privity with respect to an express warranty claim against a drug manufacturer based upon affirmations of fact or promises to the decedent, the plaintiff also could bring claims for the implied warranties of merchantability and fitness for a particular purpose. Lee v. Mylan Inc., 806 F. Supp. 2d 1320 (M.D. Ga. Apr. 15, 2011).

"Learned intermediary" doctrine. Plaintiff's breach of warranty claims against a drug manufacturer, to the extent they were based upon failure to provide accurate or sufficient information regarding the use of the drug to the decedent, were barred by the learned intermediary doctrine, but the claims were not barred to the extent they were based upon failure to provide accurate or sufficient information regarding the use of the drug to others. Lee v. Mylan Inc., 806 F. Supp. 2d 1320 (M.D. Ga. Apr. 15, 2011).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:264. 20A Am. Jur. Pleading and Practice Forms, Commercial Code, § 57.

Am. Jur. Proof of Facts. — Implied Warranty of Fitness for Particular Purpose, 27 POF2d 243.

Misrepresentations in Sale of Animal, 35 POF2d 607.

Builder-Vendor's Liability to Purchaser of New Dwelling for Breach of Implied Warranty of Fitness or Habitability, 50 POF3d 543.

11-2-316. Exclusion or modification of warranties.

Law reviews. — For article, "Giving Unconscionability More Muscle: Attorney's Fees as a Remedy for Contractual Overreaching," see 44 Ga. L. Rev. 317 (2010).

JUDICIAL DECISIONS

Analysis

Implied Warranty of Merchantability

Implied Warranty of Merchantability

Exclusion by course of conduct. — Implied warranty provisions of the Uniform Commercial Code (UCC) did not apply to a settlement between a supplier and a customer because the primary purpose of the settlement was not a sale of goods, but was to resolve a dispute about whether the customer was obligated to purchase any goods and whether the goods were merchantable. Alternatively, under O.C.G.A. § 11-2-316(3)(c), the parties had excluded the UCC's implied warranties based upon the parties course of conduct. Hanson Staple Co. v. Ole Mexican Foods, Inc., 293 Ga. App. 4, 666 S.E.2d 398 (2008), aff'd, 285 Ga. 288, 676 S.E.2d 169 (2009).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:285.

11-2-318. Third party beneficiaries of warranties express or implied.

JUDICIAL DECISIONS

Analysis

Manufacturer's Liability

Manufacturer's Liability

Pharmaceutical products. — Patient who died after taking medicine which a pharmaceutical manufacturer gave to the doctor and which the doctor gave to the patient was not entitled to an extension of any implied warranty existing between the manufacturer and the doctor, and the appellate court upheld the trial court's judgment dismissing claims the patient's spouse filed against the manufacturer, alleging breach of express and implied warranties, but reversed the trial court's judgment dismissing the husband's claims against the manufacturer alleging strict liability and negligent failure to warn. Bryant v. Hoffmann-La Roche, Inc., 262 Ga. App. 401, 585 S.E.2d 723 (2003).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:307.

11-2-319. F.O.B. and F.A.S. terms.

JUDICIAL DECISIONS

Cited in Diamond Crystal Brands, Inc. v. Food Movers Int'l, 593 F.3d 1249 (11th Cir. 2010).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:135.

11-2-323. Form of bill of lading required in overseas shipment; "overseas."

(1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless otherwise agreed shall obtain a negotiable bill of lading stating that the goods have been loaded in board or, in the case of a term C.I.F. or C. & F., received for shipment.

(2) Where in a case within subsection (1) of this Code section a tangible bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set:

(a) Due tender of a single part is acceptable within the provisions of this article on cure of improper delivery (subsection (1) of Code Section 11-2-508); and

(b) Even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing, or shipping practices characteristic of international deep water commerce. (Code 1933, § 109A-2—323, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 2-5/HB 451.)

The 2010 amendment, effective May 27, 2010, in subsection (1), substituted "shall" for "must" and substituted "in board" for "on board"; and inserted "tangible" near the beginning of subsection (2). See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not

apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:135.

11-2-326. Sale on approval and sale or return; rights of creditors.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:315.

ALR. — "Sale on approval" and "sale or return" contracts under Uniform Commercial Code § 2-326, 44 ALR6th 441.

PART 4

TITLE, CREDITORS, AND GOOD FAITH PURCHASERS

11-2-401. Passing of title; reservation for security; limited application of this Code section.

Each provision of this article with regard to the rights, obligations, and remedies of the seller, the buyer, purchasers, or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (Code Section 11-2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this title. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the article on secured transactions (Article 9 of this title), title to goods

passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his or her performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading:

(a) If the contract requires or authorizes the seller to send the goods to the buyer but does not require him or her to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) If the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods:

(a) If the seller is to deliver a tangible document of title, title passes at the time when and the place where he or she delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

(b) If the goods are at the time of contracting already identified and no documents of title are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale." (Code 1933, § 109A-2—401, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 2-6/HB 451.)

The 2010 amendment, effective May 27, 2010, inserted "or her" in subsection (2) and in paragraph (2)(a); inserted "the" in the introductory paragraph of subsection (3); in paragraph (3)(a), inserted "tangible", inserted "or she", and added "and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document" at the end; and inserted "of title" in paragraph (3)(b). See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that:

"A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

JUDICIAL DECISIONS

Analysis

General Consideration

General Consideration

Construction with other law. — After obtaining consent from the probate court to sell construction equipment an executrix's decedent secured with a promissory note, the executrix was entitled to summary judgment as to the tort claims alleged against the decedent's corporation, after the corporation wrongfully retained possession of said equipment, converted two certificates of deposit, and the decedent's liability on the notes was extinguished under a provision of a stock sales agreement; furthermore, evidence was presented that the corporation's failure to release the equipment prevented its sale to third parties and thereby constituted a breach of a duty to mitigate damages. Midway R.R. Constr. Co. v. Beck, 281 Ga. App. 412, 636 S.E.2d 110 (2006).

Attempted reservation of title amounted to a security interest. — When the peanut growers completed the performance of the growers' duties under the growers' contracts with a peanut broker by delivering the growers' peanuts to a peanut company, title passed to the broker. The growers' attempted reservation of title amounted to a security interest. Farm Credit of Northwest Fla., ACA v. Easom Peanut Co., 312 Ga. App. 374, 718 S.E.2d 590 (2011), cert. denied, 2012 Ga. LEXIS 315 (Ga. 2012).

Delivery of automobile.

Evidence showed that a car dealership sold its interest in a car to the buyer before a collision since the father signed the purchase and financing documents relating to the car sale, a credit company financed the purchase in the buyer's name and paid the dealership the car's purchase price, and the buyer's daughter took possession of the vehicle, regardless of whether an application for a certificate of title was filed before or after the collision. West v. Vill. Ford-Mercury, Inc., 256 Ga. App. 18, 567 S.E.2d 355 (2002).

Perfected security interest had priority over attempted reservation of title. — Peanut growers' attempted reservation of title when the growers' delivered peanuts to a peanut company at a peanut broker's direction amounted to a security interest; however, the growers never perfected the growers' security interests. A cooperative bank's security interest in the peanuts was perfected, as the bank had filed financing statements and the security interest had attached so that the bank's perfected security interest had priority over the growers' unperfected security interests. Farm Credit of Northwest Fla., ACA v. Easom Peanut Co., 312 Ga. App. 374, 718 S.E.2d 590 (2011), cert. denied, 2012 Ga. LEXIS 315 (Ga. 2012).

Legal title passed when goods tendered to third-party customer and bill of lading issued listing nonresident corporation as consignee. — Under O.C.G.A. § 11-2-401(2), the nonresident corporation took legal title to goods when the manufacturer tendered those goods to a third-party customer at the manufacturer's Georgia facility and issued a bill of lading listing the nonresident corporation as the consignee. Taking physical possession of the goods was not necessary; the nonresident corporation took legal title to goods located in Georgia, and that was sufficient for purposes of "transacting business" under O.C.G.A. § 9-10-91(1). Diamond Crystal Brands, Inc. v. Food Movers Int'l, 593 F.3d 1249 (11th Cir.), cert. denied, U.S. , 131 S. Ct. 158, 178 L. Ed. 2d 39 (2010).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:346.

11-2-403. Power to transfer; good faith purchase of goods; "entrusting."

JUDICIAL DECISIONS

ANALYSIS

General Consideration

Cited in First Nat'l Bank v. Proceeding Ayres Aviation Holdings, Inc. (In re Ayres Aviation Holdings, Inc.), 342 B.R. 104 (Bankr. M.D. Ga. 2006).

Good Faith Purchaser for Value

Dealer acquiring vehicle from forger.

Because plaintiff cellular telephone trademark holder's packages contained terms and conditions inside and language on the outside of the packages that referenced those terms and conditions, there was a valid "shrink-wrap" contract between the holder and purchasers of the cell phones, and allegations that defendant competitor removed the phones from their original packaging and shipped the phones outside the United States sufficiently raised a reasonable expectation that discovery would reveal evidence that the competitor was aware of the terms and conditions, was afforded an opportunity to reject the terms and conditions, and failed to reject the terms and conditions, such that a breach of contract claim was plausible, and, because the allegations indicated a lack of good faith by the competitor, the bona fide purchaser for value and buyer in the ordinary course defenses under O.C.G.A. §§ 11-1-201 and 11-2-403(1)(a) were not available. Tracfone Wireless, Inc. v. Zip Wireless Prods., 716 F. Supp. 2d 1275 (N.D. Ga. 2010).

Application

Placing automobile in hands of dealer.

In an action upon a consignment of a motor home between the consignors and a dealer, once a dealer transferred a motor home to the buyer other than by the creation of a security interest, whether the buyer obtained title to the motor home was governed by O.C.G.A. § 11-2-403(2); the fact that the dealer did not obtain a title certificate at the time of the consignment did not prevent it from transferring good title to the buyer. Smith v. Hardeman, 281 Ga. App. 402, 636 S.E.2d 106 (2006).

Where car is purchased by check later found to be worthless, etc.

An insurer of a vehicle was not entitled to summary judgment on the insurer's claims of trover and conversion against a buyer as the buyer was a good faith purchaser for value who acquired good title to the car pursuant to the voidable title doctrine under O.C.G.A. § 11-2-403, despite the fact that the check paid by the buyer's seller was later dishonored. Moreover, because the insurer stood in the shoes of the insured, it could have no greater right of recovery than that insured. Stein v. GEICO Indem. Ins. Co., 289 Ga. App. 739, 658 S.E.2d 153 (2008).

Purchase of stolen goods. — When items stolen from an electric company were sold to a supply company, the supply company was not entitled to summary judgment dismissing the electric compa-

ny's conversion claim against it as a good faith purchaser for value, under O.C.G.A. § 11-2-403, because the exception in that statute was designed to protect a purchaser acting in good faith, and whether the supply company or its principal were good faith purchasers was a jury question. Fed. Ins. Co. v. Westside Supply Co., 264 Ga. App. 240, 590 S.E.2d 224 (2003).

Preexisting security interest in collateral. — Since O.C.G.A. § 11-2-403(2) would not give a buyer title free of a preexisting security interest, it did not alter the result reached by the trial court granting appellee lender's motion and request for a writ of possession of a machine against appellant corporation, a bona fide purchaser. Intermet Corp. v. Fin. Fed. Credit, Inc., 263 Ga. App. 622, 588 S.E.2d 810 (2003).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:363.

PART 5

PERFORMANCE

11-2-503. Manner of seller's tender of delivery.

(1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time, and place for tender are determined by the agreement and this article, and in particular:

(a) Tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) Unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within Code Section 11-2-504 respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) of this Code section and also in any appropriate case tender documents as described in subsections (4) and (5) of this Code section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved:

(a) Tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) Tender to the buyer of a nonnegotiable document of title or of a record directing the bailee to deliver is sufficient tender unless the

buyer seasonably objects, and except as otherwise provided in Article 9 of this title receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the nonnegotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents:

(a) He or she shall tender all such documents in correct form, except as provided in this article with respect to bills of lading in a set (subsection (2) of Code Section 11-2-323); and

(b) Tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes nonacceptance or rejection. (Code 1933, § 109A-2—503, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 2-7/HB 451.)

The 2010 amendment, effective May 27, 2010, in paragraph (4)(b), substituted "record directing" for "written direction to" and inserted "except as otherwise provided in Article 9 of this title" near the beginning; substituted "or she shall" for "must" near the beginning of paragraph (5)(a); and inserted "or associated with" in the middle of paragraph (5)(b). See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:434.

11-2-505. Seller's shipment under reservation.

(1) Where the seller has identified goods to the contract by or before shipment:

(a) His or her procurement of a negotiable bill of lading to his or her own order or otherwise reserves in him or her a security interest in the goods. His or her procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) A nonnegotiable bill of lading to himself or herself or his or her nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of Code Section 11-2-507) a nonnegotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession or control of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within Code Section 11-2-504 but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document of title. (Code 1933, § 109A-2—505, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 2-8/HB 451.)

The 2010 amendment, effective May 27, 2010, in subsection (1), inserted "or her" throughout; in paragraph (1)(b), inserted "or herself" near the beginning and inserted "or control" near the end; and added "of title" at the end of subsection (2). See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, §§ 2:434, 2:456.

11-2-506. Rights of financing agency.

(1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft

and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular. (Code 1933, § 109A-2—506, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 2-9/HB 451.)

The 2010 amendment, effective May 27, 2010, deleted "on its face" following "regular" at the end of subsection (2). See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, §§ 2:370, 2:434.

11-2-507. Effect of seller's tender; delivery on condition.

JUDICIAL DECISIONS

Cited in Henry v. Blankenship, 284 Ga. App. 578, 644 S.E.2d 419 (2007); Mauk v. Pioneer Ford Mercury, 308 Ga. App. 864, 709 S.E.2d 353 (2011).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:434.

11-2-508. Cure by seller of improper tender or delivery; replacement.

JUDICIAL DECISIONS

Cited in Mauk v. Pioneer Ford Mercury, 308 Ga. App. 864, 709 S.E.2d 353 (2011).

Breach of express warranty not found. — Manufacturer did not breach its express warranty as the manufacturer addressed each defect in a vehicle as it arose, most repairs were made within days, and the only extended delay was the result of the buyer's decision to postpone bringing the vehicle into the repair facility. Knight v. Am. Suzuki Motor Corp., 272 Ga. App. 319, 612 S.E.2d 546 (2005).

Manufacturer's express warranty on a vehicle was not governed by the Magnuson-Moss Warranty Act, specifically 15 U.S.C. § 2304, but was governed by the Uniform Commercial Code, O.C.G.A. §§ 11-2-508, 11-2-605, and 11-2-607(3)(a) as the warranty was a limited warranty. Knight v. Am. Suzuki Motor Corp., 272 Ga. App. 319, 612 S.E.2d 546 (2005).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:434.

11-2-509. Risk of loss in the absence of breach.

(1) Where the contract requires or authorizes the seller to ship the goods by carrier:

(a) If it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (Code Section 11-2-505); but

(b) If it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer:

(a) On his or her receipt of possession or control of a negotiable document of title covering the goods; or

(b) On acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) After his or her receipt of possession or control of a nonnegotiable document of title or other direction to deliver in a record, as provided in subsection (4)(b) of Code Section 11-2-503.

(3) In any case not within subsection (1) or (2) of this Code section, the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this Code section are subject to contrary agreement of the parties and to the provisions of this article on sale on approval (Code Section 11-2-327) and on effect of breach on risk of loss (Code Section 11-2-510). (Code 1933, § 109A-2—509, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 1963, p. 188, § 3; Ga. L. 2010, p. 481, § 2-10/HB 451.)

The 2010 amendment, effective May 27, 2010, inserted "or her" twice in subsection (2); inserted "possession or control of" in the middle of paragraph (2)(a); and, in the middle of paragraph (2)(c), inserted "possession or control of" in the beginning and substituted "direction to deliver in a record" for "written direction to deliver" in the middle. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

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RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:475.

11-2-513. Buyer's right to inspection of goods.

Law reviews. — For survey article on construction law for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 85 (2003).

JUDICIAL DECISIONS

Cited in Imex Int'l v. Wires Eng'g, 261 Ga. App. 329, 583 S.E.2d 117 (2003).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:423.

PART 6

BREACH, REPUDIATION, AND EXCUSE

11-2-602. Manner and effect of rightful rejection.

JUDICIAL DECISIONS

Issues of fact for trial court.

Granting defendants a directed verdict on a truck buyer's revocation of acceptance claim under O.C.G.A. § 11-2-608 was error when the buyer testified that the truck had been in for repairs more than 30 times, that the buyer had tried to get a replacement or a refund, and that the buyer had continued to use the truck and to pay the note, taxes, and insurance on the truck because the buyer could not afford to buy another truck while attempting to resolve the problems with this one and because the buyer had no other means of transportation; although certain provisions in O.C.G.A. §§ 11-2-602 and 11-2-606 might support the unqualified proposition that continued use was inconsistent with a revocation of acceptance, issues such as whether there was effective revocation of acceptance were ordinarily jury matters, and expecting a buyer to discontinue use could be contrary to the UCC's rule of reasonableness. Franklin v. Augusta Dodge, Inc., 287 Ga. App. 818, 652 S.E.2d 862 (2007).

Cited in Imex Int'l v. Wires Eng'g, 261 Ga. App. 329, 583 S.E.2d 117 (2003).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, §§ 2:506, 2:519.

11-2-605. Waiver of buyer's objections by failure to particularize.

(1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach:

(a) Where the seller could have cured it if stated seasonably; or

(b) Between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent in the documents. (Code 1933, § 109A-2—605, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 2-11/HB 451.)

The 2010 amendment, effective May 27, 2010, substituted "in the documents" for "on the face of the documents" at the end of subsection (2). See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

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JUDICIAL DECISIONS

Breach of express warranty not found. — Manufacturer did not breach its express warranty as the manufacturer addressed each defect in a vehicle as it arose, most repairs were made within days, and the only extended delay was the result of the buyer's decision to postpone bringing the vehicle into the repair facility. Knight v. Am. Suzuki Motor Corp., 272 Ga. App. 319, 612 S.E.2d 546 (2005).

Manufacturer's express warranty on a vehicle was not governed by the Magnuson-Moss Warranty Act, specifically 15 U.S.C. § 2304, but was governed by the Uniform Commercial Code, O.C.G.A. §§ 11-2-508, 11-2-605, and 11-2-607(3)(a) as the warranty was a limited warranty. Knight v. Am. Suzuki Motor Corp., 272 Ga. App. 319, 612 S.E.2d 546 (2005).

Cited in Imex Int'l v. Wires Eng'g, 261 Ga. App. 329, 583 S.E.2d 117 (2003).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:533.

11-2-606. What constitutes acceptance of goods.

Law reviews. — For survey article on construction law for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 85 (2003).

JUDICIAL DECISIONS

Revocation of acceptance.

Granting defendants a directed verdict on a truck buyer's revocation of acceptance claim under O.C.G.A. § 11-2-608 was error when the buyer testified that the truck had been in for repairs more than 30 times, that the buyer had tried to get a replacement or a refund, and that the buyer had continued to use the truck and to pay the note, taxes, and insurance on the truck because the buyer could not afford to buy another truck while attempting to resolve the problems with this one and because the buyer had no other means of transportation; although certain provisions in O.C.G.A. §§ 11-2-602 and

11-2-606 might support the unqualified proposition that continued use was inconsistent with a revocation of acceptance, issues such as whether there was effective revocation of acceptance were ordinarily jury matters, and expecting a buyer to discontinue use could be contrary to the UCC's rule of reasonableness. Franklin v. Augusta Dodge, Inc., 287 Ga. App. 818, 652 S.E.2d 862 (2007).

Actions inconsistent with seller's ownership constituting acceptance by buyer.

Because the purchaser of an automobile continued to drive the vehicle, pay taxes on it, and insure it after the purchaser had complained of defects, these post-revocation acts constituted exercises in ownership that were inconsistent with the seller's ownership; the buyer's attempted revocation was ineffective under O.C.G.A. § 11-2-606(1)(c) and O.C.G.A. § 11-2-608(1)(b). Hines v. Mercedes-Benz USA, LLC, 358 F. Supp. 2d 1222 (N.D. Ga. 2005).

Hospital lost the right to revoke the hospital's acceptance of pumps the hospital bought from a medical supplier as nonconforming goods pursuant to O.C.G.A. § 11-2-606 by the hospital's course of conduct, i.e., by keeping the pumps for many months after the pumps were delivered without paying for the pumps, up to and including the time of suit. Ardus Med., Inc. v. Emanuel County Hosp. Auth., 558 F. Supp. 2d 1301 (S.D. Ga. 2008).

Seller of trailers was entitled to judgment as a matter of law on a buyer's breach of contract claim; the buyer accepted delivery of the trailers pursuant to O.C.G.A. § 11-2-606(c) as the buyer acted inconsistently with the seller's ownership by undertaking to resell the trailers, and the buyer failed to timely notify the seller of any alleged breach as required by O.C.G.A. § 11-2-607(3)(a). Woodridge USA Props., L.P. v. Southeast Trailer Mart, Inc., No. 10-10060, 2011 U.S. App. LEXIS 2126 (11th Cir. Feb. 1, 2011) (Unpublished).

Cited in Imex Int'l v. Wires Eng'g, 261 Ga. App. 329, 583 S.E.2d 117 (2003).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:542.

Am. Jur. Proof of Facts. — Acceptance of Goods, 37 POF2d 593.

11-2-607. Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over.

JUDICIAL DECISIONS

Analysis

General Consideration

Issues of fact for trial court.

Manufacturer's express warranty on a vehicle was not governed by the Magnuson-Moss Warranty Act, specifically 15 U.S.C. § 2304, but was governed by the Uniform Commercial Code, O.C.G.A. §§ 11-2-508, 11-2-605, and 11-2-607(3)(a) as the warranty was a limited warranty. Knight v. Am. Suzuki Motor Corp., 272 Ga. App. 319, 612 S.E.2d 546 (2005).

Effect of acceptance of goods.

Trial court did not err in awarding a seller pre-judgment interest under O.C.G.A. § 7-4-16 in the seller's breach of

contract action against a buyer to recover damages for unpaid principal on shipped material and unpurchased material because the seller's invoices were a due and payable liquidated debt on a commercial account subject to interest under § 7-4-16; because certain materials were delivered by the seller and accepted by the buyer, the buyer was responsible for payment according to the agreed-upon price. Scovill Fasteners, Inc. v. Northern Metals, Inc., 303 Ga. App. 246, 692 S.E.2d 840 (2010).

Burden of showing breach of express warranty.

Manufacturer did not breach its express warranty as the manufacturer addressed each defect in a vehicle as it arose, most repairs were made within days, and the only extended delay was the result of the buyer's decision to postpone bringing the vehicle into the repair facility. Knight v. Am. Suzuki Motor Corp., 272 Ga. App. 319, 612 S.E.2d 546 (2005).

Cited in SunTrust Bank v. Hightower, 291 Ga. App. 62, 660 S.E.2d 745 (2008).

Notice

1. In General

Failure to give notice. — When plaintiff buyers of distributorship opportunities sued defendants, the seller and the seller's principal and relatives and other corporate entities, alleging all of the products shipped to the buyers were defective, the warranty claims failed because there was no proof that notice of the defects were given. Brenner v. Future Graphics, LLC, 258 F.R.D. 561 (N.D. Ga. 2007).

2. Time

Failure to notify seller within reasonable time is a bar against recovery, etc.

In an action alleging breach of implied warranties of merchantability and fitness for a particular purpose, the customer's failure to serve the seller with notice of the defect in the product until two years and three days after the customer suffered an injury did not bar relief; the delay alone, without prejudice to the seller caused by such delay, was insufficient to bar relief. Wal-Mart Stores, Inc. v. Wheeler, 262 Ga. App. 607, 586 S.E.2d 83 (2003).

Seller of trailers was entitled to judgment as a matter of law on a buyer's breach of contract claim; the buyer accepted delivery of the trailers pursuant to O.C.G.A. § 11-2-606(c) as the buyer acted inconsistently with the seller's ownership by undertaking to resell the trailers, and the buyer failed to timely notify the seller of any alleged breach as required by O.C.G.A. § 11-2-607(3)(a). Woodridge USA Props., L.P. v. Southeast Trailer Mart, Inc., No. 10-10060, 2011 U.S. App. LEXIS 2126 (11th Cir. Feb. 1, 2011) (Unpublished).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:549. 20A Am. Jur. Pleading and Practice Forms, Products Liability, § 38.

11-2-608. Revocation of acceptance in whole or in part.

JUDICIAL DECISIONS

Continued use is inconsistent with a revocation of acceptance.

Because the purchaser of an automobile continued to drive the vehicle, pay taxes on it, and insure it after the purchaser complained of defects, these post-revocation acts constituted exercises in ownership by the purchaser that were inconsistent with the seller's ownership; the buyer's attempted revocation was ineffective under O.C.G.A. §§ 11-2-606(1)(c) and 11-2-608(1)(b). Hines v. Mercedes-Benz USA, LLC, 358 F. Supp. 2d 1222 (N.D. Ga. 2005).

In a consumer's suit against a car dealer for revocation of acceptance, regarding the sale of a used car which the dealer's salesman falsely represented had not been in a wreck, it was not error for the trial court to grant a directed verdict to the dealer because, while there was evidence that the consumer attempted to revoke the acceptance and the dealer refused, the consumer subsequently acted inconsistently with the dealer's ownership by continuing to possess the car and by installing a sunroof in it. Mitchell v. Backus Cadillac-Pontiac, Inc., 274 Ga. App. 330, 618 S.E.2d 87 (2005).

When a consumer sued a car dealer for revocation of acceptance concerning the car she bought from it, the consumer's continued use of the car and continued making payments on it were inconsistent with the dealer's ownership of the car and defeated the revocation of acceptance claim, under O.C.G.A. § 11-2-608(1). Small v. Savannah Int'l Motors, Inc., 275 Ga. App. 12, 619 S.E.2d 738 (2005).

Revocation required privity of contract and could only be asserted against seller. — Summary judgment on an automobile purchaser's revocation claim was appropriate because revocation of a sale requires privity of contract and thus can be asserted only against a seller, but the purchaser was suing the automobile distributor, not the dealership which sold the purchaser the car. Fedrick v. Mercedes-Benz USA, LLC, 366 F. Supp. 2d 1190 (N.D. Ga. 2005).

Reacceptance of goods.

Buyer, who purported to revoke acceptance of goods, could be found to have re-accepted them if, after such revocation, the buyer performed acts which were inconsistent with the seller's ownership of the goods. Olson v. Ford Motor Co., 258 Ga. App. 848, 575 S.E.2d 743 (2002).

Buyers revoked their acceptance of a motor home based on failure to repair alleged defects; the buyers' continued and extensive use of the luxury motor home for traveling to exotic places was not shown to be necessary, was inconsistent with revocation, and instead indicated reacceptance of the motor home. Gill v. Blue Bird Wanderlodge, No. 5:02-CV-328-2(CAR), 2004 U.S. Dist. LEXIS 27437 (M.D. Ga. Feb. 24, 2004).

Trial court erred in granting summary judgment in favor of a dealership and a lender in a purchaser's action to recover damages for the dealership's failure to accept the purchaser's attempted revocation under O.C.G.A. § 11-2-608 of an automobile purchase because the dealership and lender argued that the purchaser reaccepted the car since the purchaser continued driving the car after sending the revocation letter, and questions of fact existed about whether the purchaser's revocation was timely, whether the purchaser reaccepted the car after the tender, and whether the alleged defects substantially impaired the car's value to the purchaser; whether the purchaser's revocation was timely, whether the purchaser reaccepted the car, and whether the alleged defects substantially impaired the car's value to the purchaser were questions of fact for the jury. Mauk v. Pioneer Ford Mercury, 308 Ga. App. 864, 709 S.E.2d 353 (2011).

Issues of fact.

Granting defendants a directed verdict on a truck buyer's revocation of acceptance claim under O.C.G.A. § 11-2-608 was error when the buyer testified that the truck had been in for repairs more than 30 times, that the buyer had tried to get a replacement or a refund, and that the buyer had continued to use the truck and to pay the note, taxes, and insurance on the truck because the buyer could not afford to buy another truck while attempting to resolve the problems with this one and because the buyer had no other means of transportation; although certain provisions in O.C.G.A. §§ 11-2-602 and 11-2-606 might support the unqualified proposition that continued use was inconsistent with a revocation of acceptance, issues such as whether there was effective revocation of acceptance were ordinarily jury matters, and expecting a buyer to discontinue use could be contrary to the UCC's rule of reasonableness. Franklin v. Augusta Dodge, Inc., 287 Ga. App. 818, 652 S.E.2d 862 (2007).

No revocation for car buyer who could not show defective at purchase. — There was no remedy of revocation because proof that the car was defective when sold was an essential element of the

buyer's claim, which the buyer did not satisfy; the evidence showed that the buyer drove the used car approximately 26,000 miles before the cooling system began to malfunction. Dildine v. Town & Country Truck Sales, Inc., 259 Ga. App. 732, 577 S.E.2d 882 (2003).

Tender not required to revoke acceptance. — Trial court erred in granting summary judgment in favor of a dealership and a lender in a purchaser's action to recover damages for the dealership's failure to accept the purchaser's attempted revocation under O.C.G.A. § 11-2-608 of an automobile purchase; the Uniform Commercial Code does not require that a buyer tender unconforming goods to effect the revocation of a sales contract and that portion of Scott v. Team Toyota, 276 Ga. App. 257 (2005) holding otherwise is overruled. Mauk v. Pioneer Ford Mercury, 308 Ga. App. 864, 709 S.E.2d 353 (2011).

Buyer need not tender nonconforming goods as a condition precedent to a claim based on a revocation of acceptance theory of recovery, much less make an unconditional tender, because the condition precedent to a claim for damages due to the seller's failure to accept the buyer's contract revocation under O.C.G.A. § 11-2-608(2) is that the buyer give the seller notice of the revocation within a reasonable time and before the condition of the goods changes substantially from unrelated causes. Mauk v. Pioneer Ford Mercury, 308 Ga. App. 864, 709 S.E.2d 353 (2011).

Insufficient opportunity to cure. — Motor coach buyer's revocation of acceptance claim under O.C.G.A. § 11-2-608(1)(b) failed because the buyer was barred by the doctrine of invited error from denying that the buyer was required under § 11-2-608(1)(b) to provide the seller with an opportunity to seasonably cure any nonconformities in the coach prior to revocation. Car Transp. Brokerage Co. v. Blue Bird Body Co., No. 08-16103, 2009 U.S. App. LEXIS 7661 (11th Cir. Apr. 10, 2009) (Unpublished).

Futility exception to opportunity cure requirement did not apply. — Motor coach buyer's revocation of acceptance claim under O.C.G.A. § 11-2-608(1)(b) failed because the buyer's providing only one opportunity to repair before the extent of the defect was truly apparent was not reasonable under O.C.G.A. § 11-1-204; the futility exception to providing an opportunity to cure did not apply because there was no evidence that the buyer knew prior to revocation that the seller would have been unable to repair the coach. Car Transp. Brokerage Co. v. Blue Bird Body Co., No. 08-16103, 2009 U.S. App. LEXIS 7661 (11th Cir. Apr. 10, 2009) (Unpublished).

Cited in Imex Int'l v. Wires Eng'g, 261 Ga. App. 329, 583 S.E.2d 117 (2003).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:569.

11-2-609. Right to adequate assurance of performance.

JUDICIAL DECISIONS

No request for adequate assurances found. — Purchaser did not establish as a matter of law that the purchaser had made a demand on a supplier for adequate assurances under O.C.G.A. § 11-2-609(1) prior to the purchaser's breach of an agreement. A reasonable jury could have found that an email inquiring whether there was a production issue with allegedly defective products constituted a writing that demanded adequate assurance. Advanced BodyCare Solutions, LLC v. Thione Int'l, Inc., 615 F.3d 1352 (11th Cir. 2010).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:580.

11-2-612. "Installment contract"; breach.

JUDICIAL DECISIONS

Breach. — Reasonable jury could have found that a supplier did not breach an installment contract as a whole under O.C.G.A. § 11-2-612(3) when less than 20 percent of the goods in one order delivered to a purchaser were allegedly defective; the contract covered far more than the sale of the goods at issue. Advanced BodyCare Solutions, LLC v. Thione Int'l, Inc., 615 F.3d 1352 (11th Cir. 2010).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:600.

11-2-615. Excuse by failure of presupposed conditions.

JUDICIAL DECISIONS

ANALYSIS

APPLICATION

Application

Section not applicable to noncommercial goods sales contract. — Trial court did not err in awarding summary judgment to the State Medical Education Board, making a student liable for both the amount of the scholarship received and attorney's fees, as: (1) estoppels were unfavored under Georgia law; (2) the student came forward with no more than hearsay to support a claim that oral misrepresentations of fact were made regarding said scholarship; (3) the contract was not rescinded by either party; (4) no mutual mistake of fact was found; and (5) any impossibility in performing the contract was personal to the student. Moreover, the defense under O.C.G.A. § 11-2-615 did not apply. Calabro v. State Med. Educ. Bd., 283 Ga. App. 113, 640 S.E.2d 581 (2006).

Defense of impracticability contemplates impracticability of performance by seller of commercial goods, and therefore unavailable to those not in business of selling commercial goods. — Defendants in a contract dispute could not defend their failure to continue to honor merchant referral requirements in the parties' contract on the ground that performance was impracticable under O.C.G.A. § 11-2-615 because the defense of impracticability contemplates the impracticability of performance by a seller of commercial goods and defendants were not in the business of selling commercial goods to the plaintiff. Elavon, Inc. v. Wachovia Bank, NA, No. 1:09-CV-139-ODE, 2011 U.S. Dist. LEXIS 152004 (N.D. Ga. May 23, 2011).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:630.

PART 7

REMEDIES

11-2-703. Seller's remedies in general.

JUDICIAL DECISIONS

Failure to make payment. — In a suit involving an oral contract to sell a horse, it was error to grant summary judgment to the seller; there was a factual dispute as to whether the parties agreed on a deadline for payment and thus as to whether the seller was entitled to cancel the contract under O.C.G.A. § 11-2-703 when the buyer did not send a payment until after the alleged deadline expired. Rowland v. Scarborough Farms, LLC, 285 Ga. App. 831, 648 S.E.2d 151 (2007).

Cited in Imex Int'l v. Wires Eng'g, 261 Ga. App. 329, 583 S.E.2d 117 (2003).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:653.

11-2-705. Seller's stoppage of delivery in transit or otherwise.

(1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (Code Section 11-2-702) and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until:

(a) Receipt of the goods by the buyer; or

(b) Acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) Such acknowledgment to the buyer by a carrier by reshipment or as a warehouse; or

(d) Negotiation to the buyer of any negotiable document of title covering the goods.

(3)(a) To stop delivery the seller shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee shall hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.

(d) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor. (Code 1933, § 109A-2—705, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 2-12/HB 451.)

The 2010 amendment, effective May 27, 2010, substituted "a warehouse" for "warehouseman" in paragraph (2)(c); substituted "shall" for "must" in paragraphs (3)(a) and (3)(b); and inserted "of possession or control" in paragraph (3)(c). See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:675.

11-2-706. Seller's resale including contract for resale.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:681.

ALR. — Resale of goods under UCC § 2-706, 101 ALR5th 563.

11-2-711. Buyer's remedies in general; buyer's security interest in rejected goods.

JUDICIAL DECISIONS

Cited in Mauk v. Pioneer Ford Mercury, 308 Ga. App. 864, 709 S.E.2d 353 (2011).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:726.

11-2-712. "Cover"; buyer's procurement of substitute goods.

JUDICIAL DECISIONS

Expenses incident to breach. — Jury may have been authorized to find that ultimately expenses incurred by a seller to test allegedly defective carpet matting material were incurred "in connection with effecting cover," or even "in inspection" of the goods, and more generally, a jury may have found the testing costs to have been a "reasonable expense" incurred by the seller "incident to" a supplier's breach; therefore, the expenses may have been recoverable as incidental damages under O.C.G.A. § 11-2-715(1), and the trial court did not err in so ruling in entering partial summary judgment. Mitchell Family Dev. Co. v. Universal Textile Techs., LLC, 268 Ga. App. 869, 602 S.E.2d 878 (2004).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:738.

11-2-713. Buyer's damages for nondelivery or repudiation.

JUDICIAL DECISIONS

Damages not speculative. — In a suit brought by a buyer after an oral contract for the sale of a horse fell through, damages were not speculative; there was evidence that the seller had an offer of $50,000 for the horse on the same day that the seller agreed to sell the horse to the buyer for $35,000, and that the horse was eventually sold to another party for over $200,000. Rowland v. Scarborough Farms, LLC, 285 Ga. App. 831, 648 S.E.2d 151 (2007).

Insufficient proof of lost profits. — Though a subcontractor successfully proved a breach of contract claim against a supplier, the damages award in the amount of $160,000 was reversed on appeal as the subcontractor failed to present any evidence of anticipated expenses due to the loss of a construction project arising from the breach, and therefore the subcontractor's proof of lost profits was insufficient as a matter of law and required a new trial; further, because the damages award was reversed, the appellate court also reversed the award of attorney fees to the subcontractor since the award of attorney fees was contingent upon the damages award on the breach of contract claim. Bldg. Materials Wholesale, Inc. v.

Triad Drywall, LLC, 287 Ga. App. 772, 653 S.E.2d 115 (2007).

Breach of contract to sell vehicle. — In an action arising from an alleged breach of a contract to sell a vehicle brought by a buyer against a car dealer, because a genuine issue of material fact remained over the amount of damages that should be awarded, as the evidence presented a dispute as to the market price of the vehicle at the time of the breach, and the dealer's owner gave conflicting deposition testimony regarding the value of the vehicle, summary judgment was unwarranted. Jones v. Baran Co., LLC, 290 Ga. App. 578, 660 S.E.2d 420 (2008).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:747.

11-2-714. Buyer's damages for breach in regard to accepted goods.

JUDICIAL DECISIONS

ANALYSIS

General Consideration

Lay opinion as to diminished value. — Trial court erred in entering summary judgment for a manufacturer on the owners' claim for damages due to the diminished value of a vehicle where the owner's opinion as to the diminished value of the vehicle was supported by: (1) experience in purchasing three other cars, (2) familiarity with information relating to the value of the vehicle; (3) research into the manufacturer's cars; (4) discussions as to price and features with several dealerships; (5) knowledge and familiarity with the vehicle and its defects acquired over a three-year time period; and (6) use of the car, its mileage, and purchase price. Hill v. Mercedes Benz USA, LLC, 274 Ga. App. 826, 619 S.E.2d 353 (2005).

Breach of Warranty

Proof as to value of warrantied vehicle and vehicle as delivered, is required. — Motor home seller's renewed motion for judgment as a matter of law was denied in part because buyers presented sufficient evidence to support their claim for damages arising out of company's breach of implied warranty; to establish their damage claims under O.C.G.A. § 11-2-714(2); buyers established both the motor home's value as warranted and its value as delivered to them. Gill v. Bluebird Body Co., No. 5:02-CV-328 (CAR), 2005 U.S. Dist. LEXIS 4611 (M.D. Ga. Jan. 21, 2005).

Damages for breach of new car warranty.

Owners failed to present competent evidence of damages under O.C.G.A. § 11-2-714(2) because an owner's affidavit lacked a proper foundation as the owner failed to testify that any of the past purchases included the purchase of a vehicle with the defects at issue, the owner did not have any specialized knowledge, and the owner's testimony was not supported by objective information on vehicles found in published valuation guides, such as the "Blue Book"; the value of the defective vehicle could not be established by the repair invoices as few, if any, of the repairs reflected costs incurred by the owners. Hill v. Mercedes-Benz USA, LLC, 274 Ga. App. 826, 619 S.E.2d 353 (2005).

Because a manufacturer did not admit a customer's prima facie case breach of war-

ranty case under O.C.G.A. § 11-2-714(2), the trial court erred in denying the manufacturer the right to open and close the final argument under Ga. Unif. Super. Ct. R. 13.4 and O.C.G.A. § 9-10-186. Kia Motors Am., Inc. v. Range, 276 Ga. App. 360, 623 S.E.2d 514 (2005).

Proof of damages. — Because the buyers provided an insufficient foundation for a lay opinion concerning the diminished value of a vehicle under O.C.G.A. § 11-2-714(2), the trial court did not err in granting summary judgment to the automobile manufacturer on the buyers' warranty claims. Hill v. Mercedes-Benz USA, LLC, 274 Ga. App. 826, 619 S.E.2d 353 (2005).

Repair costs.

Under Fed. R. Evid. 701, the buyer of motor home could give lay testimony as to market value of motor home following repairs performed by the seller and the buyer's market value opinion was relevant because the seller conceded that the market for the type of motor home at issue was extremely individualized and the buyers represented half of the entire market for that type of motor home during the year that it was purchased; the sales contract was relevant evidence on the issue of damages because the purchase price of the motor home was evidence of its value as warranted. Gill v. Bluebird Body Co., No. 5:02-CV-328 (CAR), 2005 U.S. Dist. LEXIS 4611 (M.D. Ga. Jan. 21, 2005).

Consequential Damages

Value of car not established for purposes of determining damages. — Buyer did not produce admissible evidence of actual damages sufficient to preclude summary judgment as evidence that a car was defective, alone, did not establish the value of the goods as accepted for purposes of determining damages for breach of warranty; the trial court did not abuse its discretion in finding that the buyer's affidavit did not show a sufficient opportunity for forming a correct opinion as to damages and a proper basis for expressing the buyer's opinion. Ficklin v. Hyundai Motor Am., Inc., 272 Ga. App. 61, 611 S.E.2d 732 (2005).

Exclusion not unconscionable. — After a car owner brought a breach of warranty claim under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 et seq., the trial court erred in denying a car manufacturer's motion to exclude evidence of incidental and consequential damages, as recovery of those damages was excluded by the vehicle's warranty, pursuant to O.C.G.A. §§ 11-2-714(3) and 11-2-715, and the exclusion was not found to be unconscionable. Lee v. Mercedes-Benz USA, LLC, 276 Ga. App. 28, 622 S.E.2d 361 (2005).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:747.

11-2-715. Buyer's incidental and consequential damages.

JUDICIAL DECISIONS

Analysis

General Consideration
Lost Profits

General Consideration

Drug distributor liability for user suicide.

Jury may have been authorized to find that ultimately expenses incurred by a seller to test allegedly defective carpet matting material were incurred "in connection with effecting cover," or even "in inspection" of the goods, and more gener-

ally, a jury may have found the testing costs to have been a "reasonable expense" incurred by the seller "incident to" a supplier's breach; therefore, the expenses may have been recoverable as incidental damages under O.C.G.A. § 11-2-715(1), and the trial court did not err in so ruling in entering partial summary judgment. Mitchell Family Dev. Co. v. Universal Textile Techs., LLC, 268 Ga. App. 869, 602 S.E.2d 878 (2004).

Exclusion of consequential damages found not unconscionable. — After a car owner brought a breach of warranty claim under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 et seq., the trial court erred in denying a car manufacturer's motion to exclude evidence of incidental and consequential damages, as recovery of those damages was excluded by the vehicle's warranty, pursuant to O.C.G.A. § 11-2-714(3) and O.C.G.A. § 11-2-715, and the exclusion was not found to be unconscionable. Lee v. Mercedes-Benz USA, LLC, 276 Ga. App. 28, 622 S.E.2d 361 (2005).

Consequential damages award improper. — An award in favor of a buyer, representing a mediation settlement, was not recoverable as consequential damages under the Uniform Commercial Code, O.C.G.A. § 11-2-715. The buyer failed to present evidence showing that the award bore any relationship to the breach of warranty. Sunstate Indus. v. VP Group, Inc., 298 Ga. App. 269, 679 S.E.2d 824 (2009).

Lost Profits

Insufficient proof of lost profits. — Though a subcontractor successfully proved a breach of contract claim against a supplier, the damages award in the amount of $160,000 was reversed on appeal as the subcontractor failed to present any evidence of anticipated expenses due to the loss of a construction project arising from the breach, and therefore the subcontractor's proof of lost profits was insufficient as a matter of law and required a new trial; further, because the damages award was reversed, the appellate court also reversed the award of attorney fees to the subcontractor since the award of attorney fees was contingent upon the damages award on the breach of contract claim. Bldg. Materials Wholesale, Inc. v. Triad Drywall, LLC, 287 Ga. App. 772, 653 S.E.2d 115 (2007).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:747.

11-2-719. Contractual modification or limitation of remedy.

JUDICIAL DECISIONS

Parties cannot bar all remedies, avoid all damages.

Exclusion of consequential damages in a vehicle's warranty was not invalid under O.C.G.A. § 11-2-719(2), as the car manufacturer did not attempt to exclude all express or implied warranties; rather, the implied warranties, although limited in duration, were not excluded, and accordingly, the limitation did not "fail of its essential purpose" within the meaning of § 11-2-719(2). Lee v. Mercedes-Benz USA, LLC, 276 Ga. App. 28, 622 S.E.2d 361 (2005).

Contract remedies not exclusive. — Award of lost profits damages to a supplier on the supplier's breach of contract counterclaim against a purchaser was not precluded by O.C.G.A. § 11-2-719(1) as the contract did not clearly express that remedies listed therein were exclusive. Advanced BodyCare Solutions, LLC v. Thione Int'l, Inc., 615 F.3d 1352 (11th Cir. 2010).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:797.

11-2-725. Statute of limitations in contracts for sale.

JUDICIAL DECISIONS

ANALYSIS

General Consideration

Cited in Herndon v. Heard, 262 Ga. App. 334, 585 S.E.2d 637 (2003).

Application

Service of process beyond statute of limitation period. — Trial court erred in granting a creditor summary judgment in the creditor's action against a guarantor to collect on a past due commercial account because the guarantor was served several years beyond either the two-year statute of limitation period, O.C.G.A. § 11-2-725, or the four-year limitation period, O.C.G.A. § 9-3-25; the creditor had notice of a service of process issue at least as early as March 2007 and knew of the service problem in January 2008, but the creditor did not serve the guarantor with process until September 2008, and the creditor failed to prove that the creditor exercised due diligence in attempting to effect service. Scanlan v. Tate Supply Co., 303 Ga. App. 9, 692 S.E.2d 684 (2010).

Secured transactions. — While it appeared that O.C.G.A. § 9-3-24, rather than O.C.G.A. § 11-2-725, would most likely apply to defendant collection attorney's state court deficiency action against plaintiff consumer, and it was not for the federal court to say what the Georgia courts would hold, the uncertainty meant there was no intentional unfair conduct and the consumer's Fair Debt Collection Practices Act claim was dismissed. Almand v. Reynolds & Robin, P.C., 485 F. Supp. 2d 1361 (M.D. Ga. 2007).

Because an oral contract concerning the disposal of car skeletons on property operated as a junkyard did not violate the O.C.G.A. §§ 11-2-201 and 11-2-725, the trial court erred in granting summary judgment against a seller on his counterclaim for fraud, due to the option holder's repudiation of the contract in filing for specific performance. Henry v. Blankenship, 284 Ga. App. 578, 644 S.E.2d 419 (2007).

Claims based on invoices. — Trial court erred by granting summary judgment in favor of a debtor on all of the invoices that made up a creditor's claim against the debtor on the ground that the complaint was barred by the four-year limitation period for a suit on account because the trial court's grant of summary judgment was based on a purported admission by the creditor that the creditor's claims accrued on April 3, 2001, but the trial court misread the document, and the creditor submitted authenticated invoices, which showed dates more recent than four years prior to the date suit was filed; unless otherwise provided in the agreement, claims are barred if the claims are asserted more than four years after invoices are submitted to the buyer. Avery Enters. v. Lyndhurst Builders, LLC, 304 Ga. App. 353, 696 S.E.2d 389 (2010).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6 Am. Jur. Pleading and Practice Forms, Commercial Code, § 2:823.

ARTICLE 2A

LEASES

PART 1

GENERAL PROVISIONS

11-2A-103. Definitions and index of definitions.

(1) In this article unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who, in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind, but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a pre-existing contract for sale, but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity,

as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which:

(i) The lessor does not select, manufacture, or supply the goods;

(ii) The lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) One of the following occurs:

(A) The lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(B) The lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) The lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) If the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing (a) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (b) that the lessee is entitled under this article to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the

goods, and (c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (Code Section 11-2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this article. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this article and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who, in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind, but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a pre-existing

lease contract, but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this article and the sections in which they appear are:

"Accessions." Code Section 11-2A-310(1).

"Construction mortgage." Code Section 11-2A-309(1)(d).

"Encumbrance." Code Section 11-2A-309(1)(e).

"Fixtures." Code Section 11-2A-309(1)(a).

"Fixture filing." Code Section 11-2A-309(1)(b).

"Purchase money lease." Code Section 11-2A-309(1)(c).

(3) The following definitions in other articles of this title apply to this article:

"Account." Code Section 11-9-102(a).

"Between merchants." Code Section 11-2-104(3).

"Buyer." Code Section 11-2-103(1)(a).

"Chattel paper." Code Section 11-9-102(a).

"Consumer goods." Code Section 11-9-102(a).

"Document." Code Section 11-9-102(a).

"Entrusting." Code Section 11-2-403(3).

"General intangible." Code Section 11-9-102(a).

"Good faith." Code Section 11-2-103(1)(b).

"Instrument." Code Section 11-9-102(a).

"Merchant." Code Section 11-2-104(1).

"Mortgage." Code Section 11-9-102(a).

"Pursuant to commitment." Code Section 11-9-102(a).

"Receipt." Code Section 11-2-103(1)(c).

"Sale." Code Section 11-2-106(1).

"Sale on approval." Code Section 11-2-326.

"Sale or return." Code Section 11-2-326.

"Seller." Code Section 11-2-103(1)(d).

(4) In addition, Article 1 of this title contains general definitions and principles of construction and interpretation applicable throughout this article. (Code 1981, § 11-2A-103, enacted by Ga. L. 1993, p. 633, § 1; Ga. L. 2001, p. 362, § 9; Ga. L. 2010, p. 481, § 2-13/HB 451.)

The 2010 amendment, effective May 27, 2010, in paragraphs (1)(a) and (1)(o), inserted "or her" in the first sentence, inserted commas throughout, and substi-

tuted "acquiring" for "receiving" in the middle of the second sentence. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Status as "Buyer in Ordinary Course of Business," 2 POF2d 165.

PART 2

FORMATION AND CONSTRUCTION OF LEASE CONTRACT

11-2A-201. Statute of frauds.

Law reviews. — For article, "The Cost of Consent: Optimal Standardization in the Law of Contract," see 58 Emory L.J. 1401 (2009).

PART 5

DEFAULT

Subpart A

In General

11-2A-504. Liquidation of damages.

JUDICIAL DECISIONS

Undisputed early termination charge formula in car lease. — Summary judgment was granted in favor of the defendants, a leasing corporation and a bank, on the plaintiff's, a car lessee, challenge to the legality of the early termination charge formula used by the bank under O.C.G.A. § 11-2A-504(1) because the early termination charge formula did not violate the statute where there was no dispute as to the terms, mechanics, or the results produced in the transaction. Torres v. Banc One Leasing Corp., 226 F. Supp. 1345 (N.D. Ga. 2002).

Cited in Baez v. Banc One Leasing Corp., 348 F.3d 972 (11th Cir. 2003).

Subpart B

Default by Lessor

11-2A-514. Waiver of lessee's objections.

(1) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(a) If, stated seasonably, the lessor or the supplier could have cured it (Code Section 11-2A-513); or

(b) Between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(2) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent in the documents. (Code 1981, § 11-2A-514, enacted by Ga. L. 1993, p. 633, § 1; Ga. L. 2010, p. 481, § 2-14/HB 451.)

The 2010 amendment, effective May 27, 2010, substituted "in the documents" for "on the face of the documents" at the end of subsection (2). See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

Subpart C

Default by Lessee

11-2A-526. Lessor's stoppage of delivery in transit or otherwise.

(1) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security or otherwise under the

lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(2) In pursuing its remedies under subsection (1) of this Code section, the lessor may stop delivery until:

(a) Receipt of the goods by the lessee;

(b) Acknowledgment to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(c) Such an acknowledgment to the lessee by a carrier via reshipment or as a warehouse.

(3)(a) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(c) A carrier who has issued a nonnegotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor. (Code 1981, § 11-2A-526, enacted by Ga. L. 1993, p. 633, § 1; Ga. L. 2010, p. 481, § 2-15/HB 451.)

The 2010 amendment, effective May 27, 2010, in subsection (2), in the introductory paragraph, inserted "of this Code section" in the middle and added a colon at the end; and substituted "a warehouse" for "warehouseman" at the end of paragraph (2)(c). See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-2A-527. Lessor's rights to dispose of goods.

JUDICIAL DECISIONS

Erroneous finding or interpretation. — Because the trial court did not find any material miscalculation of figures in an arbitrator's award, mistake in the award's descriptions, or imperfection in the form of the award, but refused to apply O.C.G.A. § 11-2A-529(1)(b), opting instead to apply O.C.G.A.

§ 11-2A-528(1)(ii), it substituted its judgment for that of the arbitrator, in violation of 9 U.S.C. § 11, as to whether a lessor had shown an inability to reasonably dispose of the leased equipment, and it penalized the lessor for not relitigating the issue at the trial court level, which amounted to reversible error. Lanier Worldwide, Inc. v. BridgeCenters at Park Meadows, LLC, 279 Ga. App. 879, 633 S.E.2d 49 (2006).

11-2A-528. Lessor's damages for nonacceptance, failure to pay, repudiation, or other default.

JUDICIAL DECISIONS

Erroneous finding or interpretation. — Because the trial court did not find any material miscalculation of figures in an arbitrator's award, mistake in the award's descriptions, or imperfection in the form of the award, but refused to apply O.C.G.A. § 11-2A-529(1)(b), opting instead to apply O.C.G.A. § 11-2A-528(1)(ii), it substituted its judgment for that of the arbitrator, in violation of 9 U.S.C. § 11, as to whether a lessor had shown an inability to reasonably dispose of the leased equipment, and it penalized the lessor for not relitigating the issue at the trial court level, which amounted to reversible error. Lanier Worldwide, Inc. v. BridgeCenters at Park Meadows, LLC, 279 Ga. App. 879, 633 S.E.2d 49 (2006).

11-2A-529. Lessor's action for the rent.

JUDICIAL DECISIONS

Erroneous finding or interpretation. — Because the trial court did not find any material miscalculation of figures in an arbitrator's award, mistake in the award's descriptions, or imperfection in the form of the award, but refused to apply O.C.G.A. § 11-2A-529(1)(b), opting instead to apply O.C.G.A. § 11-2A-528(1)(ii), it substituted its judgment for that of the arbitrator, in violation of 9 U.S.C. § 11, as to whether a lessor had shown an inability to reasonably dispose of the leased equipment, and it penalized the lessor for not relitigating the issue at the trial court level, which amounted to reversible error. Lanier Worldwide, Inc. v. BridgeCenters at Park Meadows, LLC, 279 Ga. App. 879, 633 S.E.2d 49 (2006).

ARTICLE 3

NEGOTIABLE INSTRUMENTS

PART 1

GENERAL PROVISIONS AND DEFINITIONS

11-3-103. Definitions.

Law reviews. — For annual survey of law of business associations, see 56 Mercer L. Rev. 77 (2004).

JUDICIAL DECISIONS

Bank as holder in due course. — Where a fact question remained as to whether a bank accused of negligently accepting stolen checks for deposit and conversion acted in good faith in receiving forged checks, it could not achieve status as a holder in due course. Gerber & Gerber, P.C. v. Regions Bank, 266 Ga. App. 8, 596 S.E.2d 174 (2004).

Good faith. — On plaintiff commercial checking account customer's suit against defendant, its employee embezzler's depository bank, alleging the embezzler deposited checks made payable to the embezzler into the embezzler's personal account, because those checks contained no indications of forgery, and because the evidence indicated, at most, that the depository bank may have been negligent due to the fact that the bank's screening system failed to detect the forgery scheme, but it did not indicate that the bank acted in an unfair or dishonest manner, and nothing showed that the bank's failure to investigate the embezzler's account activity was dishonest or unfair, and thus was not honest in fact or did not conform to reasonable commercial standards of fair dealing in accepting the checks, the checking account customer could not prevail in showing a lack of good faith under O.C.G.A. §§ 11-3-103(a)(4) and 11-3-302(a)(2)(ii). Ownbey Enters. v. Wachovia Bank, N.A., 457 F. Supp. 2d 1341 (N.D. Ga. 2006).

Cited in Consumer Solutions Fin. Servs. v. Heritage Bank, 300 Ga. App. 272, 684 S.E.2d 682 (2009).

11-3-104. Negotiable instrument.

JUDICIAL DECISIONS

Analysis

General Consideration

Cited in Ameritrust Co. v. White, 73 F.3d 1553 (11th Cir. 1996).

Checks

Check defined.

Defendant's filling out of a loan application with an internet lender for the purchase of a vehicle by falsely using the defendant's father's social security number, which caused the lender to issue a check that was used for the payment of the vehicle, provided sufficient evidence for a conviction under O.C.G.A. § 16-8-3 even though the lender stopped payment prior to purchase; the document received by the defendant from the lender was a "check" within the definition of O.C.G.A. § 11-3-104(f)(1), as it referenced itself in that manner and was drawn on a bank. Scott v. State, 277 Ga. App. 876, 627 S.E.2d 904 (2006).

Blank payment checks were valueless. — On cross-motions for summary judgment in a Fair Labor Standards Act case filed by plaintiff Mexican national agricultural laborers against defendant employers that included a claim for conversion of certain "reimbursement" checks in that the employers directed the laborers to endorse and return the checks, and the employers argued that it was entitled to the returned checks due to the employers paying for bus fares and subsistence and additional transportation expenses in cash, and also argued that the checks were blank, the court agreed with the employers that because the checks were blank, under O.C.G.A. §§ 11-3-104(c) and 11-3-420(a), they were valueless, so there would be no damage from converting the checks. Morales-Arcadio v. Shannon Produce Farms, Inc., No. 605CV062, 2007 U.S. Dist. LEXIS 51950 (S.D. Ga. July 18, 2007).

Proof required for conversion of a check. — Appellate court erred in reversing a trial court's grant of summary judg-

ment pursuant to O.C.G.A. § 9-11-56 to an auto dealership in a conversion action against a bank, which alleged that the bank deliberately cashed a check after the dealership had placed a stop payment on the check. The law applicable to conversion of personal property applied to instruments pursuant to O.C.G.A. § 11-3-420(a), and checks were one form of instrument included in this provision, O.C.G.A. § 11-3-104(c), (f); therefore, the dealership was not required to establish the existence of specific dollars or coins in order to recover for the conversion of its check and the full value of the intangible rights identified with that check. Decatur Auto Ctr., Inc. v. Wachovia Bank, N.A., 276 Ga. 817, 583 S.E.2d 6 (2003).

11-3-108. Payable on demand or at definite time.

JUDICIAL DECISIONS

Cited in West v. Diduro, 312 Ga. App. 591, 718 S.E.2d 815 (2011).

11-3-117. Other agreements affecting instrument.

JUDICIAL DECISIONS

Modification of obligation. — Although it was true that the obligation of a party to an instrument could be modified, the bank was entitled to summary judgment on its breach of contract claim, which alleged that the obligors executed two promissory notes, that the notes were later in default, that the obligors did not have a defense, especially since the obligors did not show how modification agreements, to which the obligors were not parties, relieved them of their obligations on the notes. Reece v. Chestatee State Bank, 260 Ga. App. 136, 579 S.E.2d 11 (2003).

11-3-118. Statute of limitations.

JUDICIAL DECISIONS

Conversion and negligence action barred. — Bank account holder's conversion and negligence action against a bank for paying two checks on the holder's account without authorization was barred by the Georgia Uniform Commercial Code's three-year statute of limitations set forth in O.C.G.A. § 11-3-118(g), which applied to negotiable instruments, because the holder did not file a complaint until more than three years after the bank paid the checks at issue. Ogundele v. Wachovia Bank, N.A., No. 1:04-CV-1852-CC, 2004 U.S. Dist. LEXIS 25396 (N.D. Ga. Dec. 6, 2004).

PART 2

NEGOTIATION, TRANSFER, AND INDORSEMENT

11-3-201. Negotiation.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Cited in Gerber & Gerber, P.C. v. Regions Bank, 266 Ga. App. 8, 596 S.E.2d 174 (2004).

11-3-205. Special indorsement; blank indorsement; anomalous indorsement.

JUDICIAL DECISIONS

Cited in Gerber & Gerber, P.C. v. Regions Bank, 266 Ga. App. 8, 596 S.E.2d 174 (2004); Consumer Solutions Fin. Servs. v. Heritage Bank, 300 Ga. App. 272, 684 S.E.2d 682 (2009).

PART 3

ENFORCEMENT OF INSTRUMENTS

11-3-301. Person entitled to enforce instrument.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Bank as holder or holder in due course.

Bank that acquired a promissory note and security deed that a Chapter 13 debtor executed before the debtor declared bankruptcy, transferred the note and deed to a loan trust, and acted as the trustee for the benefit of entities that purchased interests in the trust, had standing to request relief under 11 U.S.C. § 362(d) to foreclose on the debtor's property; the bankruptcy court allowed the bank to proceed with a foreclosure sale and to record a deed of sale it obtained when it bought the debtor's property at the foreclosure sale because the debtor did not have equity in the property and did not have a reasonable prospect of proposing a viable Chapter 13 plan. The bank was a "holder" of the note and was entitled under O.C.G.A. § 11-3-301 to enforce the note. In re Darlington, No. 09-10691-WHD, 2009 Bankr. LEXIS 3577 (Bankr. N.D. Ga. Sept. 11, 2009).

Trial court did not err in granting a bank summary judgment on the bank's claims against an automobile seller for enforcement of drawer and signer obligations under the Georgia Uniform Commercial Code (UCC), O.C.G.A.

§ 11-3-414(b), and for a violation of the bad check statute, O.C.G.A. § 13-6-15, because there was no genuine issue of material fact as to whether the bank was a holder in due course of the check; the bank was entitled to enforce the drawer and signer obligations imposed upon the seller because the bank was the "holder" of the check pursuant to § 11-3-414(b), and since the bank was the depository bank, and the amount of the check was deposited to the bank's customer's account, the bank became the holder of the instrument when the bank received the check for collection. Consumer Solutions Fin. Servs. v. Heritage Bank, 300 Ga. App. 272, 684 S.E.2d 682 (2009).

Sufficient proof that bank was holder of note. — In a bank's suit against the guarantor of a note, the affidavit of the bank's vice-president established that the note was among the bank's business records and in the bank's possession; as such, the bank submitted competent proof that the bank was the holder of the note for purposes of the bank's summary judgment motion. Salahat v. FDIC, 298 Ga. App. 624, 680 S.E.2d 638 (2009).

Payee of a check who does not take delivery of the check cannot recover against bank for fraudulent endorsement. — Payee of a check who never received the check and was unaware that the check had been made out to the payee due to fraud by the payee's cousin was not a person who could enforce the check or recover against the bank for the bank's payment of the check over the fraudulent endorsement of the payee's cousin, pursuant to O.C.G.A. §§ 11-3-301 and 11-3-420. Jenkins v. Wachovia Bank, Nat'l Ass'n, 309 Ga. App. 562, 711 S.E.2d 80 (2011).

Unclean hands did not apply. — Since there was no dispute that the promissory notes at issue were authentic, that the buyers signed the notes, that the sellers' were the holders, or as to the amount due on the notes, and since a trial court did not err in finding that no novation occurred and that there were no other meritorious defenses, the trial court did not err in finding that the buyers had no defense to the sellers' suit seeking payment on the notes; however, the equitable doctrine of unclean hands had no application to an action at law, and the trial court was not authorized to reduce the amounts shown to be due and payable on the notes on account of its finding of unclean hands. Park v. Fortune Ptnr., Inc., 279 Ga. App. 268, 630 S.E.2d 871 (2006).

Cited in Gerber & Gerber, P.C. v. Regions Bank, 266 Ga. App. 8, 596 S.E.2d 174 (2004).

11-3-302. Holder in due course.

JUDICIAL DECISIONS

Analysis

General Consideration

Bank as holder in due course.

Where a fact question remained as to whether a bank accused of negligently accepting stolen checks for deposit and conversion acted in good faith in receiving forged checks, it could not achieve status as a holder in due course. Gerber & Gerber, P.C. v. Regions Bank, 266 Ga. App. 8, 596 S.E.2d 174 (2004).

Trial court did not err in granting summary judgment to a bank and a credit union, on claims of conversion, civil conspiracy and for attorney fees and punitive damages, as: (1) no probative evidence existed that the buyer received delivery of the check, and thus, it never became a holder of the instrument at issue or entitled to enforce it; (2) no evidence was presented that the bank and credit union acted in concert against the buyer; (3) no evidence of misconduct or bad faith on the

part of the bank or the credit union was presented; but, the trial court properly found that a genuine issue of material fact existed as to whether the bank and the credit union were holders in due course. Hartsock v. Rich's Emples. Credit Union, 279 Ga. App. 724, 632 S.E.2d 476 (2006).

Trial court did not err in granting a bank summary judgment on the bank's claims against an automobile seller for enforcement of drawer and signer obligations under the Georgia Uniform Commercial Code (UCC), O.C.G.A. § 11-3-414(b), and for a violation of the bad check statute, O.C.G.A. § 13-6-15, because there was no genuine issue of material fact as to whether the bank was a holder in due course of the check; the bank was entitled to enforce the drawer and signer obligations imposed upon the seller because the bank was the "holder" of the check pursuant to § 11-3-414(b), and since the bank was the depository bank, and the amount of the check was deposited to the customer's account, the bank became the holder of the instrument when the bank received the check for collection. Consumer Solutions Fin. Servs. v. Heritage Bank, 300 Ga. App. 272, 684 S.E.2d 682 (2009).

Cited in Provident Bank v. Morequity, Inc., 262 Ga. App. 331, 585 S.E.2d 625 (2003).

Holder

Bank not liable for bookkeeper's embezzlement. — A bank was properly granted summary judgment in a suit brought by a company seeking reimbursement for money its bookkeeper embezzled as the bank was a holder in due course and had paid the checks presented by the bookkeeper as it was authorized under a certificate of resolution; there was no bad faith shown on the part of the bank in paying the items presented by the bookkeeper. Dalton Point, L.P. v. Regions Bank, Inc., 287 Ga. App. 468, 651 S.E.2d 549 (2007).

Notice

Good faith. — On plaintiff commercial checking account customer's suit against defendant, its employee embezzler's depository bank, alleging the embezzler deposited checks made payable to the embezzler into the embezzler's personal account, because those checks contained no indications of forgery, and because the evidence indicated, at most, that the depository bank may have been negligent due to the fact that the bank's screening system failed to detect the forgery scheme, but it did not indicate that the bank acted in an unfair or dishonest manner, and nothing showed that the bank's failure to investigate the embezzler's account activity was dishonest or unfair, and thus was not honest in fact or did not conform to reasonable commercial standards of fair dealing in accepting the checks, the checking account customer could not prevail in showing a lack of good faith under O.C.G.A. § 11-3-302(a)(2)(ii). Ownbey Enters. v. Wachovia Bank, N.A., 457 F. Supp. 2d 1341 (N.D. Ga. 2006).

Taking without notice of forgery. — On plaintiff commercial checking account customer's suit against defendant, its employee embezzler's depository bank, alleging the embezzler deposited checks made payable to the embezzler into the embezzler's personal account, because those checks contained no indications of forgery, the depository bank's failure to verify signatures was not evidence that it acted without "honesty in fact" as a holder in due course under O.C.G.A. §§ 11-3-302(a)(2) and 11-3-306; because the depository bank had no actual notice of the embezzlement scheme or that the checks contained unauthorized signatures, no material issue of fact existed as to the notice requirement set forth under O.C.G.A. § 11-3-302(a)(2)(iii), (iv), (v), (vi). Ownbey Enters. v. Wachovia Bank, N.A., 457 F. Supp. 2d 1341 (N.D. Ga. 2006).

Holders Not in Due Course Generally

Possession. — Although the corporation met the requirements for being a holder in due course to the extent that it took the promissory note regarding the mortgage for value, in good faith, and without notice of any claim to the instrument, the corporation was not a holder in due course because it was not in possession of the promissory note at the time it

purchased the mortgage; since it was not in possession, it failed to achieve holder-in-due-course status and the bank's security interest prevailed. Provident Bank v. Morequity, Inc., 262 Ga. App. 331, 585 S.E.2d 625 (2003).

11-3-303. Value and consideration.

JUDICIAL DECISIONS

Lack of consideration not shown. — There was no merit to the claim of a maker of a promissory note that the note failed for lack of consideration. The co-maker indicated that it was issued in payment of a debt owed by the co-makers and the maker's company; thus, it was issued for value as payment of an antecedent claim under O.C.G.A. § 11-3-303, and no new consideration needed to pass between the parties. Smith v. Thigpen, 298 Ga. App. 572, 680 S.E.2d 604 (2009).

Cited in Bonem v. Golf Club of Ga., Inc., 264 Ga. App. 573, 591 S.E.2d 462 (2003).

11-3-305. Defenses and claims in recoupment.

JUDICIAL DECISIONS

Bank not liable for bookkeeper's embezzlement. — A bank was properly granted summary judgment in a suit brought by a company seeking reimbursement for money its bookkeeper embezzled as the bank was a holder in due course and had paid the checks presented by the bookkeeper as it was authorized under a certificate of resolution; there was no bad faith shown on the part of the bank in paying the items presented by the bookkeeper. Dalton Point, L.P. v. Regions Bank, Inc., 287 Ga. App. 468, 651 S.E.2d 549 (2007).

Holder in due course status irrelevant. — Whether or not a bank was a holder in due course of a check made payable to a payee who never received possession of the check before an endorsement was forged on the check was irrelevant to the payee's right to recover against the bank, because the bank's status as a holder in due course or not did not change the fact that the payee had no right to recover. Jenkins v. Wachovia Bank, Nat'l Ass'n, 309 Ga. App. 562, 711 S.E.2d 80 (2011).

Taking without notice of forgery. — On plaintiff commercial checking account customer's suit against defendant, its employee embezzler's depository bank, alleging the embezzler deposited checks made payable to the embezzler into the embezzler's personal account, because those checks contained no indications of forgery, the depository bank's failure to verify signatures was not evidence that it acted without "honesty in fact" as a holder in due course under O.C.G.A. §§ 11-3-302(a)(2) and 11-3-306; because the depository bank had no actual notice of the embezzlement scheme or that the checks contained unauthorized signatures, no material issue of fact existed as to the notice requirement set forth under O.C.G.A. §§ 11-3-302(a)(2)(iii)-(vi) and 11-3-305. Ownbey Enters. v. Wachovia Bank, N.A., 457 F. Supp. 2d 1341 (N.D. Ga. 2006).

Cited in Consumer Solutions Fin. Servs. v. Heritage Bank, 300 Ga. App. 272, 684 S.E.2d 682 (2009).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 8C Am. Jur. Pleading and Practice Forms, Duress and Undue Influence, § 1.

11-3-306. Claims to an instrument.

JUDICIAL DECISIONS

Taking without notice of forgery. — On plaintiff commercial checking account customer's suit against defendant, its employee embezzler's depository bank, alleging the embezzler deposited checks made payable to the embezzler into the embezzler's personal account, because those checks contained no indications of forgery, the depository bank's failure to verify signatures was not evidence that it acted without "honesty in fact" as a holder in due course under O.C.G.A. §§ 11-3-302(a)(2) and 11-3-306; because the depository bank had no actual notice of the embezzlement scheme or that the checks contained unauthorized signatures, no material issue of fact existed as to the notice requirement set forth under O.C.G.A. § 11-3-302(a)(2)(iii), (iv), (v), (vi). Ownbey Enters. v. Wachovia Bank, N.A., 457 F. Supp. 2d 1341 (N.D. Ga. 2006).

Bank not liable for bookkeeper's embezzlement. — A bank was properly granted summary judgment in a suit brought by a company seeking reimbursement for money its bookkeeper embezzled as the bank was a holder in due course and had paid the checks presented by the bookkeeper as it was authorized under a certificate of resolution; there was no bad faith shown on the part of the bank in paying the items presented by the bookkeeper. Dalton Point, L.P. v. Regions Bank, Inc., 287 Ga. App. 468, 651 S.E.2d 549 (2007).

Cited in Provident Bank v. Morequity, Inc., 262 Ga. App. 331, 585 S.E.2d 625 (2003).

11-3-308. Proof of signatures and status as holder in due course.

JUDICIAL DECISIONS

Analysis

General Consideration
Signatures
Defenses

General Consideration

Guarantor personally liable on promissory note. — Trial court did not err by finding a guarantor personally liable on a promissory note because the trial court correctly found that the language of the promissory note, the unconditional guaranty, and the modification to the promissory note were unambiguous, and since the documents' provisions were clear, the trial court's proper role was to apply the terms as written; in the guaranty, the guarantor expressly waived all notices or defenses to which the guarantor could be entitled under the guaranty, to the extent permitted by law, and because the guarantor failed to assert any defense based upon an alleged incompetency to enter into a contract at the time the guarantor executed the guaranty, and because the guarantor failed to show that the guaranty's broad waiver of defenses was prohibited by statute or public policy, the guarantor was bound thereby. Core LaVista, LLC v. Cumming, 308 Ga. App. 791, 709 S.E.2d 336 (2011).

Signatures

Summary judgment. — Trial court erred in granting a bank's motion for summary judgment in the bank's action seeking the repayment of a loan because the debtor specifically denied in the answer the validity of the signature on a note, which raised the defense of non est factum, created a factual question as to the authenticity of the signature, and kept the signature from being deemed admitted under O.C.G.A. § 11-3-308; as the nonmoving party to a summary judgment

motion, the debtor had to only produce or point to any evidence that gave rise to a triable issue of material fact, which the debtor did by submitting an affidavit attesting that the the debtor did not sign the note, and given that the debtor's sworn statements were unrefuted, the affidavit had to be taken as true for purposes of deciding the motion. Lee v. Suntrust Bank, 314 Ga. App. 63, 722 S.E.2d 884 (2012).

Defenses

Failure to establish defense.

Trial court erred in denying a seller's motion for summary judgment in the seller's action against the buyers to recover upon a promissory note because the buyers failed to make payments on the note, and the buyers did not show damages in any amount from the alleged failure of consideration; the note was supported by adequate consideration because the buyers took immediate possession of the seller's business and began operating the business as the buyers' own. West v. Diduro, 312 Ga. App. 591, 718 S.E.2d 815 (2011), cert. denied, 2012 Ga. LEXIS 279 (Ga. 2012).

Unclean hands doctrine did not apply. — Since there was no dispute that the promissory notes at issue were authentic, that the buyers signed the notes, that the sellers' were the holders, or as to the amount due on the notes, and since a trial court did not err in finding that no novation occurred and that there were no other meritorious defenses, the trial court did not err in finding that the buyers had no defense to the sellers' suit seeking payment on the notes; however, the equitable doctrine of unclean hands had no application to an action at law, and the trial court was not authorized to reduce the amounts shown to be due and payable on the notes on account of its finding of unclean hands. Park v. Fortune Ptnr., Inc., 279 Ga. App. 268, 630 S.E.2d 871 (2006).

11-3-311. Accord and satisfaction by use of instrument.

JUDICIAL DECISIONS

Accord and satisfaction by check and accompanying letter. — Deposit of a check constituted an accord and satisfaction under O.C.G.A. § 11-3-311 of a settlement agreement in a debt dispute as a dispute under O.C.G.A. § 13-4-103(b)(1) existed as to the fee portion of the settlement and the letter sent with the check contained a conspicuous statement under O.C.G.A. § 11-1-201(10) that the tender of the check was full payment and satisfaction of the settlement. Blitch v. Walker Pharm., 295 Ga. App. 347, 671 S.E.2d 842 (2008).

PART 4

LIABILITY OF PARTIES

RESEARCH REFERENCES

Am. Jur. Trials. — Collection Practice, 12 Am. Jur. Trials 193.

Bank Liability for Negligence in Lending and Breach of Loan Agreement, 69 Am. Jur. Trials 119.

11-3-402. Signature by representative.

JUDICIAL DECISIONS

Analysis

Representative Capacity of Signature

Representative Capacity of Signature

Representative capacity of signature.

Trial court did not err in granting a bank summary judgment on the bank's claims against an automobile seller for enforcement of drawer and signer obligations under the Georgia Uniform Commercial Code (UCC), O.C.G.A. § 11-3-414(b), and for a violation of the bad check statute, O.C.G.A. § 13-6-15, because there was no genuine issue of material fact over whether the seller was the drawer and signer of the check for purposes of the UCC and the bad check statute; the seller admitted that the seller's representative was the actual signatory of the check and that the representative possessed authority to sign checks on the seller's behalf. Consumer Solutions Fin. Servs. v. Heritage Bank, 300 Ga. App. 272, 684 S.E.2d 682 (2009).

11-3-403. Unauthorized signature.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Acceptance of forged checks. — Bank was properly granted summary judgment in a suit filed against it by a law firm for negligently accepting stolen checks and for conversion with regards to blank-endorsed cashier's checks, as such were bearer paper transferable by possession alone; however, because a fact issue remained as to whether it acted in good faith in accepting forged checks, it could not be a holder in due course, and summary judgment on that issue was improper. Gerber & Gerber, P.C. v. Regions Bank, 266 Ga. App. 8, 596 S.E.2d 174 (2004).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Ratification of Forged or Unauthorized Signature, 7 POF2d 675.

Commercial Paper — Negligence Contributing to Alteration or Unauthorized Signature Under UCC § 3-406, 14 POF2d 693.

11-3-406. Negligence contributing to forged signature or alteration of instrument.

JUDICIAL DECISIONS

ANALYSIS

COMMERCIAL REASONABLENESS

Commercial Reasonableness

Requirements for payor asserting estoppel.

Fact question remained whether a bank violated the reasonable commercial standards of fair dealing when it violated known commercial banking practices by accepting checks made payable to a law firm into a thief's personal account, where the bank also serviced the firm's business accounts and therefore knew that the firm normally placed a restrictive endorsement stamp on checks made payable to it, as the bank was on heightened notice of the irregularity of the endorsements and therefore could be held to have dealt with the firm unfairly by not making inquiry

into the legitimacy of those endorsements. Gerber & Gerber, P.C. v. Regions Bank, 266 Ga. App. 8, 596 S.E.2d 174 (2004).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Commercial Paper — Negligence Contributing to Alteration or Unauthorized Signature Under UCC § 3-406, 14 POF2d 693.

11-3-414. Obligation of drawer.

JUDICIAL DECISIONS

Bank as holder in due course. — Trial court did not err in granting a bank summary judgment on the bank's claims against an automobile seller for enforcement of drawer and signer obligations under the Georgia Uniform Commercial Code (UCC), O.C.G.A. § 11-3-414(b), and for a violation of the bad check statute, O.C.G.A. § 13-6-15, because there was no genuine issue of material fact as to whether the bank was a holder in due course of the check; the bank was entitled to enforce the drawer and signer obligations imposed upon the seller because the bank was the "holder" of the check pursuant to § 11-3-414(b), and since the bank was the depository bank, and the amount of the check was deposited to the bank's customer's account, the bank became the holder of the instrument when the bank received the check for collection. Consumer Solutions Fin. Servs. v. Heritage Bank, 300 Ga. App. 272, 684 S.E.2d 682 (2009).

Enforcement of drawer and signer obligations. — Trial court did not err in granting a bank summary judgment on the bank's claims against an automobile seller for enforcement of drawer and signer obligations under the Georgia Uniform Commercial Code (UCC), O.C.G.A. § 11-3-414(b), and for a violation of the bad check statute, O.C.G.A. § 13-6-15, because there was no genuine issue of material fact over whether the seller was the drawer and signer of the check for purposes of the UCC and the bad check statute; the seller admitted that the seller's representative was the actual signatory of the check and that the representative possessed authority to sign checks on the seller's behalf. Consumer Solutions Fin. Servs. v. Heritage Bank, 300 Ga. App. 272, 684 S.E.2d 682 (2009).

11-3-420. Conversion of instrument.

JUDICIAL DECISIONS

Analysis

General Consideration
Measure of Damages
Commercial Reasonableness

General Consideration

Action for conversion not available. — On plaintiff commercial checking account customer's suit against defendant, its payor bank, for conversion, O.C.G.A. § 11-3-420(a) preempted any claim for conversion because O.C.G.A. § 11-3-420(a), by its plain terms, barred the customer, as the issuer of the forged checks, from bringing an action for conversion relating to the forged checks. Ownbey Enters. v. Wachovia Bank, N.A., 457 F. Supp. 2d 1341 (N.D. Ga. 2006).

Payee of a check who never received the check and was unaware that the check had been made out to the payee due to

fraud by the payee's cousin was not a person who could enforce the check or recover against the bank for the bank's payment of the check over the fraudulent endorsement of the payee's cousin, pursuant to O.C.G.A. §§ 11-3-301 and 11-3-420. Jenkins v. Wachovia Bank, Nat'l Ass'n, 309 Ga. App. 562, 711 S.E.2d 80 (2011).

Proof required for conversion of a check. — Appellate court erred in reversing a trial court's grant of summary judgment pursuant to O.C.G.A. § 9-11-56 to an auto dealership in a conversion action against a bank, which alleged that the bank deliberately cashed a check after the dealership had placed a stop payment on the check. The law applicable to conversion of personal property applied to instruments pursuant to O.C.G.A. § 11-3-420(a), and checks were one form of instrument included in this provision, O.C.G.A. § 11-3-104(c), (f); therefore, the dealership was not required to establish the existence of specific dollars or coins in order to recover for the conversion of its check and the full value of the intangible rights identified with that check. Decatur Auto Ctr., Inc. v. Wachovia Bank, N.A., 276 Ga. 817, 583 S.E.2d 6 (2003).

Corporate officer's misuse of corporate account. — Because a company's corporate resolution authorized one of its officers to make deposits to and withdrawals from an account maintained at a bank, and the officer, in the process of making deposits to the account, illegally took cash back from the deposits for personal use, the bank was not liable for conversion because the corporate resolution, as well as a signature card bearing the officer's signature, gave the officer authority to deal with the account. Atlanta Sand & Supply Co. v. Citizens Bank, 276 Ga. App. 149, 622 S.E.2d 484 (2005).

Summary judgment precluded. — Trial court did not err in granting summary judgment to a bank and a credit union, on claims of conversion, civil conspiracy and for attorney fees and punitive damages, as: (1) no probative evidence existed that the buyer received delivery of the check, and thus, it never became a holder of the instrument at issue or entitled to enforce it; (2) no evidence was presented that the bank and credit union acted in concert against the buyer; (3) no evidence of misconduct or bad faith on the part of the bank or the credit union was presented; but, the trial court properly found that a genuine issue of material fact existed as to whether the bank and the credit union were holders in due course and whether the check bore evidence of forgery or alteration so as to call into question its authenticity. Hartsock v. Rich's Emples. Credit Union, 279 Ga. App. 724, 632 S.E.2d 476 (2006).

Measure of Damages

Blank payment checks were valueless. — On cross-motions for summary judgment in a Fair Labor Standards Act case filed by plaintiff Mexican national agricultural laborers against defendant employers that included a claim for conversion of certain "reimbursement" checks in that the employers directed the laborers to endorse and return the checks, and the employers argued that it was entitled to the returned checks due to the employers paying for bus fares and subsistence and additional transportation expenses in cash, and also argued that the checks were blank, the court agreed with the employers that because the checks were blank, under O.C.G.A. §§ 11-3-104(c) and 11-3-420(a), they were valueless, so there would be no damage from converting the checks. Morales-Arcadio v. Shannon Produce Farms, Inc., No. 605CV062, 2007 U.S. Dist. LEXIS 51950 (S.D. Ga. July 18, 2007).

Commercial Reasonableness

Acceptance of blank-endorsed cashier's checks. — Bank was properly granted summary judgment in a suit filed against it by a law firm for negligently accepting stolen checks and for conversion with regards to blank-endorsed cashier's checks, as such were bearer paper transferable by possession alone; however, because a fact issue remained as to whether it acted in good faith in accepting forged checks, it could not be a holder in due course, and summary judgment was improper. Gerber & Gerber, P.C. v. Regions Bank, 266 Ga. App. 8, 596 S.E.2d 174 (2004).

RESEARCH REFERENCES

ALR. — Drawer's right of recovery against depositary bank that accepts check with missing endorsement or in violation of restrictive covenant, 104 ALR5th 459.

PART 5

DISHONOR

11-3-502. Dishonor.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Wrongful Dishonor of Check, 23 POF2d 407.

PART 6

DISCHARGE AND PAYMENT

11-3-605. Discharge of indorsers and accommodation parties.

JUDICIAL DECISIONS

Analysis

Impairment of Collateral

Impairment of Collateral

Impairment of collateral defense rejected.

Even if the obligors were accommodation parties who signed two promissory notes that went into default, a point they argued without factual support, the modification agreements signed by the other people did not release them from their obligations under the notes as the obligors did not show that the agreement to extend the due date of the instrument at issue caused loss to them with respect to the right of recourse or that the value of the collateral had been impaired. Reece v. Chestatee State Bank, 260 Ga. App. 136, 579 S.E.2d 11 (2003).

ARTICLE 4

BANK DEPOSITS AND COLLECTIONS

Part 1

General Provisions and Definitions

Sec.

11-4-104. Definitions and index of definitions.

Part 2

Collection of Items: Depositary and Collecting Banks

Sec.

11-4-210. Security interest of collecting

bank in items, accompanying documents, and proceeds.

PART 1

GENERAL PROVISIONS AND DEFINITIONS

11-4-103. Variation by agreement; measure of damages; action constituting ordinary care.

JUDICIAL DECISIONS

Bank's deposit agreement with bank's customer was not unreasonable and permitted the bank to charge back to the customer's account the amount of a check upon the check's return from another bank as fraudulent, although the bank had provided provisional funds that the customer had withdrawn or paid out. Vadde v. Bank of Am., 301 Ga. App. 475, 687 S.E.2d 880 (2009), cert. denied, No. S10C0624, 2010 Ga. LEXIS 338 (Ga. 2010); cert. denied, U.S. , 131 S. Ct. 298, 178 L. Ed. 2d 143 (2010).

Shortening of notice period. — The trial court properly upheld an agreement between a customer and a bank under which the bank could not be charged with liability for negligence because the customer had not notified the bank of disputed checks within 30 days; under O.C.G.A. § 11-4-103(a), parties by agreement could change the 60-day notice period allowed for in O.C.G.A. § 11-4-406(f), and such an agreement was controlling unless it was manifestly unreasonable, which was not the case here, and shortening the time period did not excuse the bank from its duty of ordinary care or disclaim the bank's liability for negligence in the future inasmuch as the notice period started over again each time the bank sent a new statement to the customer. Freese v. Regions Bank, N.A., 284 Ga. App. 717, 644 S.E.2d 549 (2007), cert. denied, 2007 Ga. LEXIS 691 (Ga. 2007).

11-4-104. Definitions and index of definitions.

(a) In this article, unless the context otherwise requires:

(1) "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit;

(2) "Afternoon" means the period of a day between noon and midnight;

(3) "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions;

(4) "Clearing-house" means an association of banks or other payors regularly clearing items;

(5) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank;

(6) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (Code

Section 11-8-102) or instructions for uncertificated securities (Code Section 11-8-102), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft;

(7) "Draft" means a draft as defined in Code Section 11-3-104 or an item, other than an instrument, that is an order;

(8) "Drawee" means a person ordered in a draft to make payment;

(9) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Article 4A of this title or a credit or debit card slip;

(10) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(11) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit, or by remittance, or otherwise as agreed. A settlement may be either provisional or final; and

(12) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over, or that it ceases or refuses to make payments in the ordinary course of business.

(b) Other definitions applying to this article and the Code sections in which they appear are:

"Agreement for electronic presentment." Code Section 11-4-110.

"Bank." Code Section 11-4-105.

"Collecting bank." Code Section 11-4-105.

"Depositary bank." Code Section 11-4-105.

"Intermediary bank." Code Section 11-4-105.

"Payor bank." Code Section 11-4-105.

"Presenting bank." Code Section 11-4-105.

"Presentment notice." Code Section 11-4-110.

(c) "Control" as provided in Code Section 11-7-106 and the following definitions in other articles of this title apply to this article:

"Acceptance." Code Section 11-3-409.

"Alteration." Code Section 11-3-407.

"Cashier's check." Code Section 11-3-104.

"Certificate of deposit." Code Section 11-3-104.

"Certified check." Code Section 11-3-409.

"Check." Code Section 11-3-104.

"Good faith." Code Section 11-3-103.

"Holder in due course." Code Section 11-3-302.

"Instrument." Code Section 11-3-104.

"Notice of dishonor." Code Section 11-3-503.

"Order." Code Section 11-3-103.

"Ordinary care." Code Section 11-3-103.

"Person entitled to enforce." Code Section 11-3-301.

"Presentment." Code Section 11-3-501.

"Promise." Code Section 11-3-103.

"Prove." Code Section 11-3-103.

"Teller's check." Code Section 11-3-104.

"Unauthorized signature." Code Section 11-3-403.

(d) In addition Article 1 of this title contains general definitions and principles of construction and interpretation applicable throughout this article. (Code 1933, § 109A-4—104, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 1963, p. 188, § 9; Ga. L. 1974, p. 618, § 1; Ga. L. 1992, p. 2685, § 3; Ga. L. 1996, p. 1306, § 4; Ga. L. 1998, p. 1323, § 17; Ga. L. 2010, p. 481, § 2-16/HB 451.)

The 2010 amendment, effective May 27, 2010, substituted "'Control' as provided in Code Section 11-7-106 and the" for "The" at the beginning of the introductory paragraph of subsection (c). See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

JUDICIAL DECISIONS

Analysis

General Consideration

General Consideration

Midnight deadline. — There was no issue of fact as to whether a check received by a bank was returned to the Federal Reserve Bank by the midnight deadline of June 19, although the Federal Reserve stamped the check received as of June 22, because there was no evidence to contradict a bank officer's deposition that the check was timely returned. The bank had no control over when the Federal Reserve processed the check. Whooping Creek Constr., LLC v. Bartow County Bank, 310 Ga. App. 690, 713 S.E.2d 871 (2011).

11-4-111. Statute of limitations.

JUDICIAL DECISIONS

Conversion and negligence action barred. — Bank account holder's conversion and negligence action against a bank for paying two checks on the holder's account without authorization was barred by the Georgia Uniform Commercial Code's three-year statute of limitations set forth in O.C.G.A. § 11-4-111, which applied to bank-customer relationships, because the holder did not file a complaint until more than three years after the bank paid the checks at issue. Ogundele v. Wachovia Bank, N.A., No. 1:04-CV-1852-CC, 2004 U.S. Dist. LEXIS 25396 (N.D. Ga. Dec. 6, 2004).

PART 2

COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS

11-4-202. Responsibility for collection or return; when action timely.

JUDICIAL DECISIONS

Notification of returned check on same date bank received notice. — Bnk demonstrated that the bank satisfied O.C.G.A. § 11-4-202 by notifying the bank's customer that a check deposited by the customer had been returned due to fraud on the same date the bank received notification from the payor bank that the check was counterfeit. Vadde v. Bank of Am., 301 Ga. App. 475, 687 S.E.2d 880 (2009), cert. denied, No. S10C0624, 2010 Ga. LEXIS 338 (Ga. 2010); cert. denied, U.S. , 131 S. Ct. 298, 178 L. Ed. 2d 143 (2010).

11-4-205. Depositary bank holder of unindorsed item.

JUDICIAL DECISIONS

Bank as holder of instrument issued to it.

Trial court did not err in granting a bank summary judgment on the bank's claims against an automobile seller for enforcement of drawer and signer obliga-

tions under the Georgia Uniform Commercial Code (UCC), O.C.G.A. § 11-3-414(b), and for a violation of the bad check statute, O.C.G.A. § 13-6-15, because there was no genuine issue of material fact as to whether the bank was a holder in due course of the check; the bank was entitled to enforce the drawer and signer obligations imposed upon the seller because the bank was the "holder" of the check pursuant to § 11-3-414(b), and since the bank was the depository bank, and the amount of the check was deposited to the customer's account, the bank became the holder of the instrument when the bank received the check for collection. Consumer Solutions Fin. Servs. v. Heritage Bank, 300 Ga. App. 272, 684 S.E.2d 682 (2009).

11-4-210. Security interest of collecting bank in items, accompanying documents, and proceeds.

(a) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(1) In case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(2) In case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or

(3) If it makes an advance on or against the item.

(b) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents, or the proceeds of either. For the purpose of this Code section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Article 9 of this title, but:

(1) No security agreement is necessary to make the security interest enforceable (subparagraph (b)(3)(A) of Code Section 11-9-203);

(2) No filing is required to perfect the security interest; and

(3) The security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds. (Code 1933, § 109A-4—208, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 1963, p. 188, § 12; Code 1981, § 11-4-210, as redesignated by Ga. L. 1996, p. 1306, § 9; Ga. L. 2001, p. 362, § 13; Ga. L. 2010, p. 481, § 2-17/HB 451.)

The 2010 amendment, effective May 27, 2010, inserted a comma after ""credit given" near the middle of paragraph (a)(2); and inserted "possession or control of the" in the middle of the second sentence of subsection (c). See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-4-212. Presentment by notice of item not payable by, through, or at a bank; liability of drawer or indorser.

JUDICIAL DECISIONS

Cited in Baker v. Campbell, 255 Ga. App. 523, 565 S.E.2d 855 (2002).

11-4-214. Right of charge-back or refund; liability of collecting bank; return of item.

JUDICIAL DECISIONS

Right to charge back credit.

Bank's deposit agreement with the bank's customer was not unreasonable and permitted the bank to charge back to the customer's account the amount of a check upon the check's return from another bank as fraudulent, although the bank had provided provisional funds that the customer had withdrawn or paid out. Vadde v. Bank of Am., 301 Ga. App. 475, 687 S.E.2d 880 (2009), cert. denied, No. S10C0624, 2010 Ga. LEXIS 338 (Ga. 2010); cert. denied, U.S. , 131 S. Ct. 298, 178 L. Ed. 2d 143 (2010).

11-4-215. Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal.

JUDICIAL DECISIONS

Analysis

General Consideration

General Consideration

Cited in Baker v. Campbell, 255 Ga. App. 523, 565 S.E.2d 855 (2002).

PART 3

COLLECTION OF ITEMS: PAYOR BANKS

11-4-301. Deferred posting; recovery of payment by return of items; time of dishonor; return of items by payor bank.

JUDICIAL DECISIONS

Midnight deadline. — There was no issue of fact as to whether a check received by a bank was returned to the Federal Reserve Bank by the midnight deadline of June 19, although the Federal Reserve stamped the check received as of June 22, because there was no evidence to contradict a bank officer's deposition that the check was timely returned. The bank had no control over when the Federal Reserve processed the check. Whooping Creek Constr., LLC v. Bartow County Bank, 310 Ga. App. 690, 713 S.E.2d 871 (2011).

11-4-302. Payor bank's responsibility for late return of item.

JUDICIAL DECISIONS

Compliance with midnight deadline. — There was no issue of fact as to whether a check received by a bank was returned to the Federal Reserve Bank by the midnight deadline of June 19, although the Federal Reserve stamped the check received as of June 22, because there was no evidence to contradict a bank officer's deposition that the check was timely returned. The bank had no control over when the Federal Reserve processed the check. Whooping Creek Constr., LLC v. Bartow County Bank, 310 Ga. App. 690, 713 S.E.2d 871 (2011).

11-4-303. When items subject to notice, stop-payment order, legal process, or setoff; order in which items may be charged or certified.

JUDICIAL DECISIONS

Order in which items are paid. — While plaintiff bank customers alleged defendant bank had a practice of manipulating the posting of transactions to impose overdraft fees, there was no substantive unconscionability under O.C.G.A. § 11-2-302 as the deposit agreement was consistent with O.C.G.A. § 11-4-303(b) as to the order items were paid. White v. Wachovia Bank, N.A., 563 F. Supp. 2d 1358 (N.D. Ga. 2008).

PART 4

RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

11-4-401. When bank may charge customer's account.

JUDICIAL DECISIONS

Analysis

General Consideration

General Consideration

Liability of bank for wrongful honor of forged endorsement.

On plaintiff commercial checking account customer's suit against defendant, its payor bank, under O.C.G.A. § 11-4-401, alleging checks forged by it employee, although the customer reasonably should have detected the unauthorized payment by examining each check's payee information and the statements, and the customer thus failed to comply with its duties under O.C.G.A. § 11-4-406(c), (d)(2), the payor bank made no showing that it complied with local industry standards or acted consistently with general banking usage; the comparative negligence test of O.C.G.A. § 11-4-406(e) applied. Ownbey Enters. v. Wachovia Bank, N.A., 457 F. Supp. 2d 1341 (N.D. Ga. 2006).

11-4-402. Bank's liability to customer for wrongful dishonor; time of determining insufficiency of account.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Wrongful Dishonor of Check, 23 POF2d 407.

11-4-406. Customer's duty to discover and report unauthorized signature or alteration.

JUDICIAL DECISIONS

ANALYSIS

General Consideration

Duty of depositor to minimize damages.

On plaintiff commercial checking account customer's suit against defendant, its payor bank, under O.C.G.A. § 11-4-401, alleging checks forged by it employee, although the reduced check images returned with the monthly statements were difficult to read, the customer reasonably should have detected the unauthorized payment by examining each check's payee information and the statements and thus, the customer failed to comply with its duties under O.C.G.A. § 11-4-406(c), (d)(2). Ownbey Enters. v. Wachovia Bank, N.A., 457 F. Supp. 2d 1341 (N.D. Ga. 2006).

Cited in Dalton Point, L.P. v. Regions Bank, Inc., 287 Ga. App. 468, 651 S.E.2d 549 (2007).

Sixty-Day and One-Year Notice Requirements

Applicability of subsection (f).

On plaintiff commercial checking account customer's suit against defendant, its employee embezzler's depository bank, O.C.G.A. § 11-4-406's notice requirements applied to the embezzler's depository bank and the depository bank was not liable for the forged checks paid more than 60 days before the customer reported the forgeries to its payor bank. Ownbey Enters. v. Wachovia Bank, N.A., 457 F. Supp. 2d 1341 (N.D. Ga. 2006).

Shortening of notice period by agreement. — The trial court properly upheld an agreement between a customer and a bank under which the bank could not be charged with liability for negligence because the customer had not notified the bank of disputed checks within 30

days; under O.C.G.A. § 11-4-103(a), parties by agreement could change the 60-day notice period allowed for in O.C.G.A. § 11-4-406(f), and such an agreement was controlling unless it was manifestly unreasonable, which was not the case here, and shortening the time period did not excuse the bank from its duty of ordinary care or disclaim the bank's liability for negligence in the future inasmuch as the notice period started over again each time the bank sent a new statement to the customer. Freese v. Regions Bank, N.A., 284 Ga. App. 717, 644 S.E.2d 549 (2007), cert. denied, 2007 Ga. LEXIS 691 (Ga. 2007).

Conversion and negligence action barred. — Bank account holder's conversion and negligence action against a bank for paying two checks on the holder's account without authorization was barred by O.C.G.A. § 11-4-406(f) of Georgia's Uniform Commercial Code, because the holder admitted receiving regular statements from the bank but did not open the statements until more than one year after the allegedly unauthorized checks had been paid. Ogundele v. Wachovia Bank, N.A., No. 1:04-CV-1852-CC, 2004 U.S. Dist. LEXIS 25396 (N.D. Ga. Dec. 6, 2004).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6A Am. Jur. Pleading and Practice Forms, Commercial Code, § 4:212.

ARTICLE 4A

FUNDS TRANSFERS

PART 1

SUBJECT MATTER AND DEFINITIONS

11-4A-108. Exclusion of consumer transactions governed by federal law.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of Electronic Fund Transfer Act (EFTA), and regulations promulgated thereunder, 15 USCS §§ 1693 et seq. 46 ALR Fed. 2d 473.

ARTICLE 5

LETTERS OF CREDIT

11-5-111. Remedies.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Reduction or Mitigation of Damages — Sales Contract, 11 POF2d 131.

11-5-114. Assignment of proceeds.

JUDICIAL DECISIONS

Breach of letter of credit. — Buyer was not an indispensable party to a seller's suit alleging that a bank breached a letter of credit by failing to honor its obligation under O.C.G.A. § 11-5-114 to pay a demand because: (1) the buyer's joinder was not necessary in order to afford complete relief between the seller and the bank; (2) the bank could file suit against the buyer for indemnification or implead the buyer in the current suit; and (3) the bank would not be subject to multiple inconsistent judgment obligations if the buyer were not joined. GE Credit Corp. of Tenn. v. First Nat'l Banc, Inc., No. CV205-112, 2005 U.S. Dist. LEXIS 19191 (S.D. Ga. Sept. 2, 2005).

ARTICLE 6

BULK TRANSFERS

11-6-101. Short title.

JUDICIAL DECISIONS

Bulk Transfer Act, O.C.G.A. § 11-6-101 et seq., did not authorize a direct negligence action against a transferee of goods because the transferor of the goods was alleged to have committed the underlying negligent act; also, the Bulk Transfer Act did not preserve a remedy against a transferee personally, so a complaint against a transferee based on an assault by employees of the transferor was properly dismissed. Tate v. Kia Autosport of Stone Mt., Inc., 273 Ga. App. 627, 616 S.E.2d 112 (2005).

Direct action against transferee not permitted. — Trial court erred by failing to grant a succeeding franchisee's motion for summary judgment in a fraud suit brought by car dealership consumers as the consumers failed to establish the succeeding franchisee's participation or involvement in any of the complained of transactions; thus, no unfair business violations were established, and no direct claim against a transferee was permitted under the Bulk Transfer Act, O.C.G.A. § 11-6-101 et seq. Additionally, the consumers' claims under Georgia's Racketeer Influenced and Corrupt Organizations statute, O.C.G.A. § 16-14-1 et seq., likewise failed since the uncontroverted evidence established without question that the succeeding franchisee did not make any misrepresentations to the consumers nor participated in any of the transactions that formed the basis of the consumers' claims. Summit Auto. Group, LLC v. Clark Kia Motors Ame., Inc., 298 Ga. App. 875, 681 S.E.2d 681 (2009).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 6A Am. Jur. Pleading and Practice Forms, Commercial Code, § 6:3.

11-6-105. Notice to creditors.

JUDICIAL DECISIONS

Customers were not entitled to notice. — Dissatisfied customers of a car dealership were not creditors entitled to notice of a bulk transfer as required by O.C.G.A. §§ 11-6-105 and 11-6-107. Actions within the scope of the Bulk Transfer Act, O.C.G.A. § 11-6-101 et seq., do not permit direct actions in tort against the transferee; indeed the purpose of the Act was to protect creditors against fraudulent sales by debtors and to preserve a creditor's remedy against the goods, not against the transferee personally. Summit Auto. Group, LLC v. Clark Kia Motors Ame., Inc., 298 Ga. App. 875, 681 S.E.2d 681 (2009).

11-6-107. The notice.

JUDICIAL DECISIONS

Customers were not entitled to notice. — Dissatisfied customers of a car dealership were not creditors entitled to notice of a bulk transfer as required by O.C.G.A. §§ 11-6-105 and 11-6-107. Actions within the scope of the Bulk Transfer Act, O.C.G.A. § 11-6-101 et seq., do not permit direct actions in tort against the transferee; indeed the purpose of the Act was to protect creditors against fraudulent sales by debtors and to preserve a creditor's remedy against the goods, not against the transferee personally. Summit Auto. Group, LLC v. Clark Kia Motors Ame., Inc., 298 Ga. App. 875, 681 S.E.2d 681 (2009).

ARTICLE 7

WAREHOUSE RECEIPTS, BILLS OF LADING, AND OTHER DOCUMENTS OF TITLE

Part 1

General

Part 2

Warehouse Receipts: Special Provisions

Part 3

Bills of Lading: Special Provisions

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Warehouseman's Failure to Care for Stored Property — Deterioration of Perishable Goods, 20 POF2d 371.

PART 1

GENERAL

11-7-101. Short title.

Editor's notes. — Ga. L. 2010, p. 481, § 1-1, effective May 27, 2010, reenacted this Code section without change. Refer to bound volume for text of this Code section.

Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title

had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-102. Definitions and index of definitions.

(a) In this article, unless the context otherwise requires:

(1) "Bailee" means a person that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.

(2) "Carrier" means a person that issues a bill of lading.

(3) "Consignee" means a person named in a bill of lading to which or to whose order the bill promises delivery.

(4) "Consignor" means a person named in a bill of lading as the person from which the goods have been received for shipment.

(5) "Delivery order" means a record that contains an order to deliver goods directed to a warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading.

(6) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) "Goods" means all things that are treated as movable for the purposes of a contract of storage or transportation.

(8) "Issuer" means a bailee who issues a document of title or, in the case of an unaccepted delivery order, the person who orders the possessor of goods to deliver. The term includes a person for which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer's instructions.

(9) "Person entitled under the document" means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.

(10) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(11) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic sound, symbol, or process.

(12) "Shipper" means a person that enters into a contract of transportation with a carrier.

(13) "Warehouse" means a person engaged in the business of storing goods for hire.

(b) Definitions in other articles of this title applying to this article and the Code sections in which they appear are:

(1) "Contract for sale." Code Section 11-2-106.

(2) "Lessee in the ordinary course of business." Code Section 11-2A-103.

(3) "Receipt" of goods. Code Section 11-2-103.

(c) In addition, Article 1 of this title contains general definitions and principles of construction and interpretation applicable throughout this article. (Code 1933, § 109A-7—102, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, redesignated former subsection (1) as present subsection (a); rewrote present subsection (a); deleted former subsection (2), which read: "Other definitions applying to this article or to specified parts thereof, and the Code sections in which they appear are:

"'Duly negotiate.' Code Section 11-7-501.

"'Person entitled under the document.' Code Section 11-7-403(4).."; redesignated former subsections (3) and (4) as present subsections (b) and (c), respectively; and, in present subsection (b), added the paragraph designations, deleted "'Overseas.' Code Section 11-2-323." following "Section 11-2-106.", and added paragraph (b)(2). See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act

as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-103. Relation of article to treaty or statute.

(a) Except as otherwise provided in this article, this article is subject to any treaty or statute of the United States to the extent the treaty or statute is applicable.

(b) This article does not modify or repeal any law prescribing the form or content of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee's business in respects not specifically treated in this article. However, a violation of such a law does not affect the status of a document of title that otherwise is within the definition of a document of title.

(c) This article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

(d) To the extent that there is a conflict between any provisions of the laws of this state regarding electronic transactions and this article, this article governs. (Code 1933, § 109A-7—103, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, substituted "treaty or statute" for "treaty, statute, tariff, classification, or regulation" in the catchline; designated the existing provisions as subsection (a); in subsection (a), substituted "Except as otherwise provided in this article, this article is subject to" for "To the extent that" at the beginning and substituted "to the extent the treaty or statute is applicable" for ", or tariff, classification, or regulation filed or issued pursuant thereto is applicable, the provisions of this article are subject thereto"; and added subsections (b) through (d). See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-104. Negotiable and nonnegotiable document of title.

(a) Except as otherwise provided in subsection (c) of this Code section, a document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.

(b) A document of title other than one described in subsection (a) of this Code section is nonnegotiable. A bill of lading that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against an order in a record signed by the same or another named person.

(c) A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable. (Code 1933, § 109A-7—104, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, deleted "warehouse receipt, bill of lading, or other" preceding "document" in the catchline; redesignated former subsections (1) and (2) as present subsections (a) and (b), respectively; rewrote present subsection (a); in present subsection (b), substituted "A document of title other than one described in subsection (a) of this Code section" for "Any other document" at the beginning of the first sentence and, in the second sentence, substituted "that states" for "in which it is stated" near the beginning and substituted "an order in a record" for "a written order" near the end; and added subsection (c). See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-105. Reissuance in alternative medium.

(a) Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document of title as a substitute for the electronic document if:

(1) The person entitled under the electronic document surrenders control of the document to the issuer; and

(2) The tangible document when issued contains a statement that it is issued in substitution for the electronic document.

(b) Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with subsection (a) of this Code section:

(1) The electronic document ceases to have any effect or validity; and

(2) The person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

(c) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

(1) The person entitled under the tangible document surrenders possession of the document to the issuer; and

(2) The electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(d) Upon issuance of an electronic document of title in substitution for a tangible document of title in accordance with subsection (c) of this Code section:

(1) The tangible document ceases to have any effect or validity; and

(2) The person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer. (Code 1933, § 109A-7—105, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, substituted "Reissuance in alternative medium" for "Construction against negative implication" in the catchline; and rewrote this Code section. See the editor's note for applicability.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, "in accordance" was substituted for "is accordance" in the introductory language of subsection (d).

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this

Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-106. Control of electronic document of title.

(a) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(b) A system satisfies subsection (a) of this Code section, and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in a manner that:

(1) A single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6) of this subsection, unalterable;

(2) The authoritative copy identifies the person asserting control as:

(A) The person to which the document was issued; or

(B) If the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized. (Code 1981, § 11-7-106, enacted by Ga. L. 2010, p. 481, § 1-1/HB 451.)

Effective date. — This Code section became effective May 27, 2010. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this

Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

PART 2

WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

11-7-201. Person that may issue a warehouse receipt; storage under bond.

(a) A warehouse receipt may be issued by any warehouse.

(b) If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods is deemed to be a warehouse receipt even if issued by a person that is the owner of the goods and is not a warehouse. (Code 1933, § 109A-7—201, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, in the catchline, substituted "Person that" for "Who" at the beginning and deleted "government" preceding "bond" at the end; redesignated former subsections (1) and (2) as present subsections (a) and (b), respectively; substituted "warehouse" for "warehouseman" at the end of present subsections (a) and (b); and, in present subsection (b), substituted "If goods," for "Where" at the beginning, substituted "is deemed to be" for "has like effect as", and substituted "if issued by a person that" for "though issued by a person who" near the end. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-202. Form of warehouse receipt; effect of omission.

(a) A warehouse receipt need not be in any particular form.

(b) Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by its omission:

(1) A statement of the location of the warehouse facility where the goods are stored;

(2) The date of issue of the receipt;

(3) The unique identification code of the receipt;

(4) A statement whether the goods received will be delivered to the bearer, to a named person, or to a named person or its order;

(5) The rate of storage and handling charges, unless goods are stored under a field warehousing arrangement, in which case a statement of that fact is sufficient on a nonnegotiable receipt;

(6) A description of the goods or the packages containing them;

(7) The signature of the warehouse or its agent;

(8) If the receipt is issued for goods that the warehouse owns, either solely, jointly, or in common with others, a statement of the fact of that ownership; and

(9) A statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, unless the precise amount of advances made or liabilities incurred, at the time of the issue of the receipt, is unknown to the warehouse or to its agent that issued the receipt, in which case a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.

(c) A warehouse may insert in its receipt any terms that are not contrary to the provisions of this title and do not impair its obligation of delivery under Code Section 11-7-403 or its duty of care under Code Section 11-7-204. Any contrary provision is ineffective. (Code 1933, § 109A-7—202, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, rewrote this Code section. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does

not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-203. Liability for nonreceipt or misdescription.

A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

(1) The document conspicuously indicates that the issuer does not know whether all or part of the goods in fact were received or conform to the description, such as a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by "contents, condition, and quality unknown," "said to contain," or words of similar import, if such indication is true; or

(2) The party or purchaser otherwise has notice of the nonreceipt or misdescription. (Code 1933, § 109A-7—203, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, rewrote this Code section. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-204. Duty of care; contractual limitation of warehouse's liability.

(a) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a

reasonably careful person would exercise under similar circumstances. Unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse's liability for conversion to its own use. On request of the bailor in a record at the time of signing the storage agreement or within a reasonable time after receipt of the warehouse receipt, the warehouse's liability may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement. (Code 1933, § 109A-7—204, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, rewrote this Code section. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

JUDICIAL DECISIONS

Debtor not a fiduciary. — Where a farmer did not require that the proceeds of the debtor's sales of the farmer's seeds be kept in a separate account, and the debtor paid the debtor's company's operating expenses with the proceeds of the sale of the farmer's seeds, the debtor was not a fiduciary under 11 U.S.C. § 523(a)(4) and the debt was discharged in the debtor's bankruptcy; neither O.C.G.A. § 11-9-315(a)(1) nor O.C.G.A. § 11-7-204(1) imposed any fiduciary duties on the debtor. Bennett v. Wright, 282 Bankr. 510 (Bankr. M.D. Ga. 2002).

11-7-205. Title under warehouse receipt defeated in certain cases.

A buyer in ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated. (Code 1933, § 109A-7—205, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, deleted "the" preceding "ordinary" near the beginning, substituted "warehouse that" for "warehouseman who", inserted "the goods", and substituted "if the receipt is negotiable and" for "though it" near the end. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-206. Termination of storage at warehouse's option.

(a) A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title or, if a period is not fixed, within a stated period not less than 30 days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to Code Section 11-7-210.

(b) If a warehouse in good faith believes that goods are about to deteriorate or decline in value to less than the amount of its lien within the time provided in subsection (a) of this Code section and Code Section 11-7-210, the warehouse may specify in the notice given under subsection (a) of this Code section any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(c) If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the warehouse facilities, or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.

(d) A warehouse shall deliver the goods to any person entitled to them under this article upon due demand made at any time before sale or other disposition under this Code section.

(e) A warehouse may satisfy its lien from the proceeds of any sale or disposition under this Code section but shall hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods. (Code 1933, § 109A-7—206, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, rewrote this Code section. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-207. Goods shall be kept separate; fungible goods.

(a) Unless the warehouse receipt provides otherwise, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.

(b) If different lots of fungible goods are commingled, the goods are owned in common by the persons entitled thereto and the warehouse is severally liable to each owner for that owner's share. If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts the warehouse has issued against it, the persons entitled include all holders to whom overissued receipts have been duly nego-

tiated. (Code 1933, § 109A-7—207, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, substituted "shall" for "must" in the catchline; redesignated former subsections (1) and (2) as present subsections (a) and (b), respectively; in present subsection (a), substituted "provides otherwise, a warehouse shall" for "otherwise provides, a warehouseman must" near the beginning and substituted "goods. However," for "goods except that" near the end; and, in present subsection (b), in the first sentence, substituted "If different lots of fungible goods are commingled, the goods" for "Fungible goods so commingled" near the beginning and substituted "warehouse" for "warehouseman", and, in the second sentence, substituted "If, because of overissue," for "Where because of overissue" near the beginning and substituted "the warehouse" for "which the warehouseman" in the middle. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-208. Altered warehouse receipts.

If a blank in a negotiable warehouse receipt has been filled in without authority, a good-faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor. (Code 1933, § 109A-7—208, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, in the first sentence, substituted "If" for "Where" at the beginning, inserted "good-faith", and substituted "lack" for "want"; and inserted "tangible or electronic warehouse" in the second sentence. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that:

"A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-209. Lien of warehouse.

(a) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the specific goods covered by the receipt subsequent to the date of the receipt.

(b) A warehouse may also reserve a security interest against the bailor for the maximum amount specified on the receipt for charges other than those specified in subsection (a) of this Code section, such as for money advanced and interest. The security interest is governed by Article 9 of this title.

(c) A warehouse's lien for charges and expenses under subsection (a) of this Code section or a security interest under subsection (b) of this Code section is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good-faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:

(1) Deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) Actual or apparent authority to ship, store, or sell;

(B) Power to obtain delivery under Code Section 11-7-403; or

(C) Power of disposition under Code Section 11-2-403, subsection (2) of Code Section 11-2A-304, subsection (2) of Code Section 11-2A-305, Code Section 11-9-320, or subsection (c) of Code Section 11-9-321 or other statute or rule of law; or

(2) Acquiesce in the procurement by the bailor or its nominee of any document.

(d) A warehouse's lien on household goods for charges and expenses in relation to the goods under subsection (a) of this Code section is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, 'household goods' means furniture, furnishings, or personal effects used by the depositor in a dwelling.

(e) A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver. (Code 1933, § 109A-7—209, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 1973, p. 437, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, substituted "warehouse" for "warehouseman" in the section catchline; and rewrote this Code section. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

JUDICIAL DECISIONS

Warehouse receipt necessary to claim a warehouse lien. — Absent a warehouse receipt, a peanut company which warehoused and processed peanuts could not claim a warehouse lien on the proceeds from the peanuts. Farm Credit of Northwest Fla., ACA v. Easom Peanut Co., 312 Ga. App. 374, 718 S.E.2d 590 (2011), cert. denied, 2012 Ga. LEXIS 315 (Ga. 2012).

11-7-210. Enforcement of warehouse's lien.

(a) Except as provided in subsection (b) of this Code section, a warehouse's lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are

commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification shall include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse sells in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(b) A warehouse may enforce its lien on goods, other than goods stored by a merchant in the course of its business, only if the following requirements are satisfied:

(1) All persons known to claim an interest in the goods shall be notified.

(2) The notification shall include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(3) The sale shall conform to the terms of the notification.

(4) The sale shall be held at the nearest suitable place to where the goods are held or stored.

(5) After the expiration of the time given in the notification, an advertisement of the sale shall be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement shall include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale shall take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement shall be posted at least ten days before the sale in not fewer than six conspicuous places in the neighborhood of the proposed sale.

(c) Before any sale pursuant to this Code section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this Code section. In that event, the goods may not be sold but shall be retained by the warehouse subject to the terms of the receipt and this article.

(d) A warehouse may buy at any public sale held pursuant to this Code section.

(e) A purchaser in good faith of goods sold to enforce a warehouse's lien takes the goods free of any rights of persons against which the lien was valid, despite the warehouse's noncompliance with this Code section.

(f) A warehouse may satisfy its lien from the proceeds of any sale pursuant to this Code section but shall hold the balance, if any, for delivery on demand to any person to which the warehouse would have been bound to deliver the goods.

(g) The rights provided by this Code section shall be in addition to all other rights allowed by law to a creditor against a debtor.

(h) If a lien is on goods stored by a merchant in the course of its business, the lien may be enforced in accordance with subsection (a) or (b) of this Code section.

(i) A warehouse is liable for damages caused by failure to comply with the requirements for sale under this Code section and, in case of willful violation, is liable for conversion. (Code 1933, § 109A-7—210, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, substituted "warehouse's" for "warehouseman's" in the catchline; and rewrote this Code section. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

PART 3

BILLS OF LADING: SPECIAL PROVISIONS

11-7-301. Liability for nonreceipt or misdescription; "said to contain"; "shipper's weight, load, and count"; improper handling.

(a) A consignee of a nonnegotiable bill of lading which has given value in good faith, or a holder to which a negotiable bill has been duly negotiated, relying upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the bill indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in a case in which the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown," "said to contain," "shipper's weight, load, and count," or words of similar import, if that indication is true.

(b) If goods are loaded by the issuer of a bill of lading:

(1) The issuer shall count the packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk; and

(2) Words such as "shipper's weight, load, and count" or words of similar import indicating that the description was made by the shipper are ineffective except as to goods concealed in packages.

(c) If bulk goods are loaded by a shipper that makes available to the issuer of a bill of lading adequate facilities for weighing those goods, the issuer shall ascertain the kind and quantity within a reasonable time after receiving the shipper's request to do so. In that case "shipper's weight" or words of similar import are ineffective.

(d) The issuer of a bill of lading, by including in the bill the words "shipper's weight, load, and count" or words of similar import, may indicate that the goods were loaded by the shipper, and, if that statement is true, the issuer is not liable for damages caused by the improper loading. However, omission of such words does not imply liability for damages caused by improper loading.

(e) A shipper guarantees to an issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. This right of indemnity does not limit the issuer's responsibility or liability under the contract of carriage to any person

other than the shipper. (Code 1933, § 109A-7—301, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, substituted "weight, load," for "load" in the catchline; and rewrote this Code section. See the editor's note for applicability.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, the word "be" was deleted preceding "liable" in the first sentence of subsection (d).

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-302. Through bills of lading and similar documents of title.

(a) The issuer of a through bill of lading, or other document of title embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier, is liable to any person entitled to recover on the bill or other document for any breach by the other person or the performing carrier of its obligation under the bill or other document. However, to the extent that the bill or other document covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

(b) If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are received by that person, the person is subject, with respect to its own performance while the goods are in its possession, to the obligation of the issuer. The person's obligation is discharged by delivery of the goods to another person pursuant to the bill or other document and does not include liability for breach by any other person or by the issuer.

(c) The issuer of a through bill of lading or other document of title described in subsection (a) of this Code section is entitled to recover from the performing carrier, or other person in possession of the goods when the breach of the obligation under the bill or other document occurred:

(1) The amount it may be required to pay to any person entitled to recover on the bill or other document for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment; and

(2) The amount of any expense reasonably incurred by the issuer in defending any action commenced by any person entitled to recover on the bill or other document for the breach. (Code 1933, § 109A-7—302, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, added "of title" in the catchline; and rewrote this Code section. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-303. Diversion; reconsignment; change of instructions.

(a) Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:

(1) The holder of a negotiable bill;

(2) The consignor on a nonnegotiable bill, even if the consignee has given contrary instructions;

(3) The consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

(4) The consignee on a nonnegotiable bill, if the consignee is entitled as against the consignor to dispose of the goods.

(b) Unless instructions described in subsection (a) of this Code section are included in a negotiable bill of lading, a person to which the bill is duly negotiated may hold the bailee according to the original terms. (Code 1933, § 109A-7—303, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, redesignated former subsections (1) and (2) as present subsections (a) and (b), respectively; rewrote present subsection (a); and, in present subsection (b), substituted "instructions described in subsection (a) of this Code section are included in" for "such instructions are noted on" near the beginning, substituted "which" for "whom", and substituted "may" for "can" near the end. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-304. Tangible bills of lading in a set.

(a) Except as customary in international transportation, a tangible bill of lading may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(b) If a tangible bill of lading is lawfully issued in a set of parts, each of which contains an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes one bill.

(c) If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrendering its part.

(d) A person that negotiates or transfers a single part of a tangible bill of lading issued in a set is liable to holders of that part as if it were the whole set.

(e) The bailee shall deliver in accordance with Part 4 of this article against the first presented part of a tangible bill of lading lawfully drawn in a set. Delivery in this manner discharges the bailee's obligation on the whole bill. (Code 1933, § 109A-7—304, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, substituted "Tangible bills" for "Bills" at the beginning of the catchline; redesignated former subsections (1)

through (5) as present subsections (a) through (e), respectively; substituted "as customary in international transportation, a tangible bill of lading may" for "where customary in overseas transportation, a bill of lading must" in the first sentence of present subsection (a); in present subsection (b), substituted "If a tangible bill of lading is lawfully issued" for "Where a bill of lading is lawfully drawn", substituted "contains an identification code and is" for "is numbered and", and substituted "constitutes" for "constitute" near the end; in present subsection (c), substituted "If a tangible negotiable" for "Where a" at the beginning, substituted "which" for "whom", inserted "of title", substituted "if any" for "though any", and deleted "surrender of his" preceding "surrendering" near the end; in present subsection (d), substituted "A person that" for "Any person who", inserted "tangible", and substituted "issued" for "drawn"; and, in present subsection (e), in the first sentence, substituted "shall deliver" for "is obliged to deliver" near the beginning and inserted "tangible", and substituted "Delivery in this manner" for "Such delivery" at the beginning of the second sentence. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-305. Destination bills.

(a) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.

(b) Upon request of any person entitled as against the carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering such goods, the issuer, subject to Code Section 11-7-105, may procure a substitute bill to be issued at any place designated in the request. (Code 1933, § 109A-7—305, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, redesignated former subsections (1) and (2) as present subsections (a) and (b), respectively; substituted "shipment, a carrier, at the request of the consignor, may" for "shipment a carrier may at the request of the consignor" in present subsection (a); and, in present subsection (b), substituted "any person" for "anyone" near the beginning, inserted "of possession or control" in the middle, and inserted ", subject to Code Section 11-7-105," near the end. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481,

§ 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-306. Altered bills of lading.

Editor's notes. — Ga. L. 2010, p. 481, § 1-1, effective May 27, 2010, reenacted this Code section without change. Refer to bound volume for text of this Code section.

Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-307. Lien of carrier.

(a) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, a reasonable charge.

(b) A lien for charges and expenses under subsection (a) of this Code section on goods that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked

authority to subject the goods to those charges and expenses. Any other lien under subsection (a) of this Code section is effective against the consignor and any person that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked authority.

(c) A carrier loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver. (Code 1933, § 109A-7—307, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, redesignated former subsections (1) through (3) as present subsections (a) through (c), respectively; rewrote present subsection (a); in present subsection (b), substituted "subsection (a)" for "subsection (1)" twice, in the first sentence, substituted "that" for "which" and substituted "those" for "such", and, in the second sentence, substituted "that" for "who" and deleted "such" preceding "authority" at the end. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-308. Enforcement of carrier's lien.

(a) A carrier's lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification shall include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a method different from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier sells goods in a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or otherwise sells in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) Before any sale pursuant to this Code section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this Code section. In that event, the goods may not be sold but shall be retained by the carrier, subject to the terms of the bill of lading and this article.

(c) The carrier may buy at any public sale pursuant to this Code section.

(d) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against which the lien was valid, despite the carrier's noncompliance with this Code section.

(e) A carrier may satisfy its lien from the proceeds of any sale pursuant to this Code section but shall hold the balance, if any, for delivery on demand to any person to which the carrier would have been bound to deliver the goods.

(f) The rights provided by this Code section are in addition to all other rights allowed by law to a creditor against a debtor.

(g) A carrier's lien may be enforced pursuant to either subsection (a) of this Code section or the procedure set forth in subsection (b) of Code Section 11-7-210.

(h) A carrier is liable for damages caused by failure to comply with the requirements for sale under this Code section and, in case of willful violation, is liable for conversion. (Code 1933, § 109A-7—308, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, rewrote this Code section. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-309. Duty of care; contractual limitation of carrier's liability.

(a) A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods which a reasonably careful person would exercise under similar circumstances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

(b) Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and the consignor is advised of the opportunity. However, such a limitation is not effective with respect to the carrier's liability for conversion to its own use.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment may be included in a bill of lading or a transportation agreement. (Code 1933, § 109A-7—309, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, rewrote this Code section. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

PART 4

WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

11-7-401. Irregularities in issue of receipt or bill or conduct of issuer.

The obligations imposed by this article on an issuer apply to a document of title even if:

(1) The document does not comply with the requirements of this article or of any other statute, rule, or regulation regarding its issuance, form, or content;

(2) The issuer violated laws regulating the conduct of its business;

(3) The goods covered by the document were owned by the bailee when the document was issued; or

(4) The person issuing the document is not a warehouse but the document purports to be a warehouse receipt. (Code 1933, § 109A-7—401, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, rewrote this Code section. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-402. Duplicate document of title; overissue.

A duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitute documents issued pursuant to Code Section 11-7-105. The issuer is liable for damages caused by its overissue or failure to identify

a duplicate document by a conspicuous notation. (Code 1933, § 109A-7—402, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, substituted "document of title" for "receipt or bill" in the catchline; in the first sentence, substituted "A duplicate or" for "Neither a duplicate nor" at the beginning, substituted "does not confer" for "confers", substituted "tangible bills of lading in a set of parts" for "bills in a set", deleted "and" preceding "substitutes", and added ", or substituted documents issued pursuant to Code Section 11-7-105" at the end; and, in the second sentence, substituted "The" for "But the" at the beginning, substituted "its" for "his", and substituted "by a conspicuous notation" for "as such by conspicuous notation on its face" at the end. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-403. Obligation of bailee to deliver; excuse.

(a) A bailee shall deliver the goods to a person entitled under a document of title if the person complies with subsections (b) and (c) of this Code section, unless and to the extent that the bailee establishes any of the following:

(1) Delivery of the goods to a person whose receipt was rightful as against the claimant;

(2) Damage to or delay, loss, or destruction of the goods for which the bailee is not liable;

(3) Previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse's lawful termination of storage;

(4) The exercise by a seller of its right to stop delivery pursuant to Code Section 11-2-705 or by a lessor of its right to stop delivery pursuant to Code Section 11-2A-526;

(5) A diversion, reconsignment, or other disposition pursuant to Code Section 11-7-303;

(6) Release, satisfaction, or any other personal defense against the claimant; or

(7) Any other lawful excuse.

(b) A person claiming goods covered by a document of title shall satisfy the bailee's lien if the bailee so requests or if the bailee is prohibited by law from delivering the goods until the charges are paid.

(c) Unless a person claiming the goods is a person against which the document of title does not confer a right under subsection (a) of Code Section 11-7-503:

(1) The person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and

(2) The bailee shall cancel the document or conspicuously indicate in the document the partial delivery or the bailee is liable to any person to which the document is duly negotiated. (Code 1933, § 109A-7—403, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, substituted "bailee" for "warehouseman or carrier" in the catchline; redesignated former paragraphs (1) through (3) as present subsections (a) through (c), respectively; rewrote present subsection (a); in present subsection (b), substituted "shall" for "must" and substituted "if" for "where" twice; rewrote present subsection (c); and deleted former subsection (4), which read: "'Person entitled under the document' means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a nonnegotiable document." See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-404. No liability for good-faith delivery pursuant to document of title.

A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of the document of title or pursuant to this article is not liable for the goods even if:

(1) The person from which the bailee received the goods did not have authority to procure the document or to dispose of the goods; or

(2) The person to which the bailee delivered the goods did not have authority to receive the goods. (Code 1933, § 109A-7—404, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, rewrote this Code section. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

PART 5

WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

11-7-501. Form of negotiation and requirements of due negotiation.

(a) The following rules apply to a negotiable tangible document of title:

(1) If the document's original terms run to the order of a named person, the document is negotiated by the named person's indorsement and delivery. After the named person's indorsement in blank or to bearer, any person may negotiate the document by delivery alone;

(2) If the document's original terms run to bearer, it is negotiated by delivery alone;

(3) If the document's original terms run to the order of a named person and it is delivered to the named person, the effect is the same as if the document had been negotiated;

(4) Negotiation of the document after it has been indorsed to a named person requires indorsement by the named person and delivery; and

(5) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

(b) The following rules apply to a negotiable electronic document of title:

(1) If the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Indorsement by the named person is not required to negotiate the document;

(2) If the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated; and

(3) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

(c) Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.

(d) The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill or constitute notice to a purchaser of the bill of any interest of that person in the goods. (Code 1933, § 109A-7-—501, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 1963, p. 188, § 18; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, deleted the quotation marks around "due negotiation" in the catchline; redesignated former subsections (1) through (4) as subsection (a); rewrote present subsection (a); added subsection (b); redesignated former subsections (5) and (6) as present subsections (c) and (d), respectively; in present subsection (c), inserted "of title" in the middle; and, in present subsection (d), inserted "of lading", substituted "or" for "nor", substituted "of the bill" for "thereof", and substituted "that person" for "such person"

near the end. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-502. Rights acquired by due negotiation.

(a) Subject to Code Sections 11-7-205 and 11-7-503, a holder to which a negotiable document of title has been duly negotiated acquires thereby:

(1) Title to the document;

(2) Title to the goods;

(3) All rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(4) The direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under this article, but in the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(b) Subject to Code Section 11-7-503, title and rights so acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee and are not impaired even if:

(1) The due negotiation or any prior due negotiation constituted a breach of duty;

(2) Any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; or

(3) A previous sale or other transfer of the goods or document has been made to a third person. (Code 1933, § 109A-7—502, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, redesignated subsections (1) and (2) as present subsections (a) and (b), respectively; substituted "Sections 11-7-205 and 11-7-503, a holder to which" for "Section 11-7-503 and to the provisions of Code Section 11-7-205 on fungible goods, a holder to whom" in the introductory paragraph; redesignated former paragraphs (1)(a) through (1)(d) as present paragraphs (a)(1) through (a)(4), respectively; in present paragraph (a)(4), substituted "the issuer" for "him", substituted "article, but in the" for "article. In the", inserted a comma, inserted "the baliee's", and inserted "of the delivery order"; in the introductory paragraph of present subsection (b), inserted "by due negotiation", inserted "of title", substituted "the goods" for "such goods", deleted a comma following "bailee", and substituted "if:" for "though the" at the end; added the paragraph designations in present subsection (b); in present paragraph (b)(1), added "The due" at the beginning and substituted a semicolon for "or even though any;"; in present paragraph (b)(2), added "Any" at the beginning, substituted "a negotiable tangible document or control of a negotiable electronic document" for "the document" in the middle, and substituted a semicolon for a comma; and substituted "A previous" for "even though a previous" at the beginning of present paragraph (b)(3). See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-503. Document of title to goods defeated in certain cases.

(a) A document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and that did not:

(1) Deliver or entrust the goods or any document of title covering the goods to the bailor or the bailor's nominee with:

(A) Actual or apparent authority to ship, store, or sell;

(B) Power to obtain delivery under Code Section 11-7-403; or

(C) Power of disposition under Code Section 11-2-403, subsection (2) of Code Section 11-2A-304, subsection (2) of Code Section

11-2A-305, Code Section 11-9-320, or subsection (c) of Code Section 11-9-321 or other statute or rule of law; or

(2) Acquiesce in the procurement by the bailor or its nominee of any document.

(b) Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That title may be defeated under Code Section 11-7-504 to the same extent as the rights of the issuer or a transferee from the issuer.

(c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance with Part 4 of this article pursuant to its own bill of lading discharges the carrier's obligation to deliver. (Code 1933, § 109A-7—503, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2001, p. 362, § 16; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, redesignated former subsections (1) through (3) as present subsections (a) through (c), respectively; rewrote present subsection (a); in present subsection (b), substituted "any person to which" for "anyone to whom" in the middle of the first sentence and substituted "That title" for "Such a title" at the beginning of the second sentence; and, in present subsection (c), substituted "any person to which" for "anyone to whom" and substituted "negotiated. However," for "negotiated; but" in the middle. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-504. Rights acquired in the absence of due negotiation; effect of diversion; stoppage of delivery.

(a) A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.

(b) In the case of a transfer of a nonnegotiable document of title, until but not after the bailee receives notice of the transfer, the rights of the transferee may be defeated:

(1) By those creditors of the transferor which could treat the transfer as void under Code Section 11-2-402 or 11-2A-308;

(2) By a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights;

(3) By a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or

(4) As against the bailee, by good-faith dealings of the bailee with the transferor.

(c) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver the goods to the consignee defeats the consignee's title to the goods if the goods have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and, in any event, defeats the consignee's rights against the bailee.

(d) Delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller under Code Section 11-2-705 or a lessor under Code Section 11-2A-526, subject to the requirements of due notification in those Code sections. A bailee that honors the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense. (Code 1933, § 109A-7—504, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, rewrote this Code section. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-505. Indorser not guarantor for other parties.

The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or previous indorsers. (Code 1933, § 109A-7—505, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, deleted "a" preceding "not" in the catchline; inserted "tangible" and deleted "by" preceding "previous" near the end. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-506. Delivery without indorsement; right to compel indorsement.

The transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied. (Code 1933, § 109A-7—506, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, inserted "tangible" near the beginning and, near the middle, substituted "its" for "his" and inserted a comma following "indorsement". See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-507. Warranties on negotiation or delivery of document of title.

If a person negotiates or delivers a document of title for value, otherwise than as a mere intermediary under Code Section 11-7-508, unless otherwise agreed, the transferor, in addition to any warranty made in selling or leasing the goods, warrants to its immediate purchaser only that:

(1) The document is genuine;

(2) The transferor does not have knowledge of any fact that would impair the document's validity or worth; and

(3) The negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents. (Code 1933, § 109A-7—507, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, rewrote this Code section. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-508. Warranties of collecting bank as to documents of title.

A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority even if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected. (Code 1933, § 109A-7—508, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, added "of title" in the catchline; inserted "of title" near the beginning; and, near the middle, substituted "the delivery" for "such delivery" and substituted "even if the collecting bank or other" for ". This rules applies even though the". See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assem-

bly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-509. Adequate compliance with commercial contract.

Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is determined by Article 2, 2A, or 5 of this title. (Code 1933, § 109A-7—509, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, substituted "Adequate" for "Receipt or bill; when adequate" at the beginning of the catchline; and rewrote this Code section. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

PART 6

WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

11-7-601. Lost, stolen, or destroyed documents of title.

(a) If a document of title is lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the

bailee may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or the issuance of a substitute document without the claimant's posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was nonnegotiable, the court may require security. The court may also order payment of the bailee's reasonable costs and attorney's fees in any action under this subsection.

(b) A bailee that, without a court order, delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby. If the delivery is not in good faith, the bailee is liable for conversion. Delivery in good faith is not conversion if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery which files a notice of claim within one year after the delivery. (Code 1933, § 109A-7—601, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, substituted "Lost, stolen, or destroyed documents of title" for "Lost and missing documents" in the catchline; redesignated former subsections (1) and (2) as present subsections (a) and (b), respectively; rewrote present subsection (a); and, in present subsection (b), substituted "that, without a court order," for "who without court order" near the beginning, inserted "of title", substituted "thereby. If the delivery" for "thereby, and if the delivery", and substituted ", the bailee is" for "becomes", and, in the present last sentence, deleted "made in accordance with a filed classification or tariff or, where no classification or tariff is filed, if" preceding "the claimant" and substituted "which files" for "who files" near the end. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-602. Judicial process against goods covered by negotiable document of title.

Unless a document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach by virtue of any judicial process to goods in the possession of

a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document's negotiation is enjoined. The bailee may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process. (Code 1933, § 109A-7—602, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, substituted "Judicial process against goods covered by negotiable document of title" for "Attachment of goods covered by a negotiable document" in the catchline; and rewrote this Code section. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-7-603. Conflicting claims; interpleader.

If more than one person claims title to or possession of the goods, the bailee is excused from delivery until the bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader. The bailee may assert an interpleader either in defending an action for nondelivery of the goods or by original action. (Code 1933, § 109A-7—603, enacted by Ga. L. 1962, p. 156, § 1; Ga. L. 2010, p. 481, § 1-1/HB 451.)

The 2010 amendment, effective May 27, 2010, inserted "to" near the beginning, substituted "the bailee has" for "he has had", substituted "commence an action for interpleader. The bailee may assert an interpleader" for "bring an action to compel all claimants to interplead and may compel such interpleader", and deleted ", whichever is appropriate" following "action" at the end. See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does

not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

ARTICLE 8

INVESTMENT SECURITIES

Part 1

Short Title and General Matters

Sec.

11-8-103. Rules for determining whether certain obligations and interests are securities or financial assets.

Part 6

Transition Provisions for Revised Article 8 and Conforming Amendments to Articles 1, 3, 4, 5, 9, and 10

Sec.

11-8-602. Repeals [Repealed].

PART 1

SHORT TITLE AND GENERAL MATTERS

11-8-103. Rules for determining whether certain obligations and interests are securities or financial assets.

(a) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(b) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(c) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(d) A writing that is a security certificate is governed by this article and not by Article 3 of this title, even though it also meets the

requirements of that article. However, a negotiable instrument governed by Article 3 of this title is a financial asset if it is held in a securities account.

(e) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(f) A commodity contract, as defined in subsection (a) of Code Section 11-9-102, is not a security or a financial asset.

(g) A document of title is not a financial asset unless subparagraph (a)(9)(iii) of Code Section 11-8-102 applies. (Code 1981, § 11-8-103, enacted by Ga. L. 1998, p. 1323, § 1; Ga. L. 2001, p. 362, § 17; Ga. L. 2010, p. 481, § 2-18/HB 451.)

The 2010 amendment, effective May 27, 2010, added subsection (g). See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-8-113. Statute of frauds inapplicable.

JUDICIAL DECISIONS

Statute inapplicable. — Because a stockholder did not seek to enforce an oral contract for the sale of securities, but sought to recover damages for the tortious deprivation of an interest in the corporation, which was already acquired and paid for, the Statute of Frauds in effect at the time of the claim had no bearing on the case. Monterrey Mexican Rest. of Wise, Inc. v. Leon, 282 Ga. App. 439, 638 S.E.2d 879 (2006).

PART 3

TRANSFER OF CERTIFICATED AND UNCERTIFICATED SECURITIES

11-8-306. Effect of guaranteeing signature, indorsement, or instruction.

Law reviews. — For article, "2008 Annual Review of Case Law Development," see 14 (No. 6) Ga. St. B.J. 28 (2009).

JUDICIAL DECISIONS

Liability of corporate defendants acting as signature guarantors. — In a damages action filed by a decedent-stockholder's executors arising from the alleged wrongful transfer of the stock, summary judgment in favor of those corporate defendants acting as signature guarantors, as well as on a claim to avoid the stock transfers under O.C.G.A. § 13-3-24, was proper. But, summary judgment was reversed as to the alleged wrongful registration of the transfer of the stock. Dudley v. Wachovia Bank, N.A., 290 Ga. App. 220, 659 S.E.2d 658 (2008).

PART 4

REGISTRATION

11-8-404. Wrongful registration.

JUDICIAL DECISIONS

Summary judgment not appropriate for wrongful registration. — In a damages action filed by a decedent-stockholder's executors arising from the alleged wrongful transfer of the stock, summary judgment in favor of those corporate defendants acting as signature guarantors, as well as on a claim to avoid the stock transfers under O.C.G.A. § 13-3-24, was proper. But, summary judgment was reversed as to the alleged wrongful registration of the transfer of the stock. Dudley v. Wachovia Bank, N.A., 290 Ga. App. 220, 659 S.E.2d 658 (2008).

11-8-406. Obligation to notify issuer of lost, destroyed, or wrongfully taken security certificate.

JUDICIAL DECISIONS

Cited in Dudley v. Wachovia Bank, N.A., 290 Ga. App. 220, 659 S.E.2d 658 (2008).

11-8-407. Authenticating trustee, transfer agent, and registrar.

JUDICIAL DECISIONS

Cited in Dudley v. Wachovia Bank, N.A., 290 Ga. App. 220, 659 S.E.2d 658 (2008).

PART 6

TRANSITION PROVISIONS FOR REVISED ARTICLE 8 AND CONFORMING AMENDMENTS TO ARTICLES 1, 3, 4, 5, 9, AND 10

11-8-602. Repeals.

Reserved. Repealed by Ga. L. 2010, p. 579, § 5, effective July 1, 2010.

Editor's notes. — This Code section was based on Code 1981, § 11-8-602, enacted by Ga. L. 1998, p. 1323, § 1.

ARTICLE 9

SECURED TRANSACTIONS

Part 1

General Provisions

Subpart 1

Short Title, Definitions, and General Concepts

Part 2

Effectiveness of Security Agreement; Attachment of Security Interest; Rights of Parties to Security Agreement

Subpart 1

Effectiveness and Attachment

Subpart 2

Rights and Duties

Part 3

Perfection and Priority

Subpart 1

Law Governing Perfection and Priority

Subpart 2

Perfection

PART 1

GENERAL PROVISIONS

Law reviews. — For article, "Revised Article 9 of Uniform Commercial Code Adopted," see 6 Ga. St. B.J. 22 (2001).

Subpart 1

Short Title, Definitions, and General Concepts

11-9-101. Short title.

JUDICIAL DECISIONS

Cited in Motors Acceptance Corp. v. Rozier, 278 Ga. 52, 597 S.E.2d 367 (2004).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Violation of the Truth-In-Lending Act and Regulation Z, 73 POF3d 275.

11-9-102. Definitions and index of definitions.

(a) **Article 9 definitions.** As used in this article, the term:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) "Account," except as used in "account for," means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health care insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter of credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting," except as used in "accounting for," means a record:

(A) Authenticated by a secured party;

(B) Indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(C) Identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest in farm products:

(A) Which secures payment or performance of an obligation for:

(i) Goods or services furnished in connection with a debtor's farming operation; or

(ii) Rent on real property leased by a debtor in connection with its farming operation;

(B) Which is created by statute in favor of a person that:

(i) In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) Leased real property to a debtor in connection with the debtor's farming operation; and

(C) Whose effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means:

(A) Oil, gas, or other minerals that are subject to a security interest that:

(i) Is created by a debtor having an interest in the minerals before extraction; and

(ii) Attaches to the minerals as extracted; or

(B) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) To sign; or

(B) To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

(8) "Authority" means the Georgia Superior Court Clerks' Cooperative Authority.

(9) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(10) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(11) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(12) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a

lease of specific goods, or a lease of specific goods and license of software used in the goods. As used in this paragraph, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include:

(A) Charters or other contracts involving the use or hire of a vessel; or

(B) Records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(13) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(A) Proceeds to which a security interest attaches;

(B) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) Goods that are the subject of a consignment.

(14) "Commercial tort claim" means a claim arising in tort with respect to which:

(A) The claimant is an organization; or

(B) The claimant is an individual and the claim:

(i) Arose in the course of the claimant's business or profession; and

(ii) Does not include damages arising out of personal injury to or the death of an individual.

(15) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(16) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) Traded on a foreign commodity board of trade, exchange, or market and is carried on the books of a commodity intermediary for a commodity customer.

(17) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(18) "Commodity intermediary" means a person that:

(A) Is registered as a futures commission merchant under federal commodities law; or

(B) In the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(19) "Communicate" means:

(A) To send a written or other tangible record;

(B) To transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) In the case of transmission of a record to or by a filing office or the authority, to transmit a record by any means prescribed by filing office rule.

(20) "Consignee" means a merchant to which goods are delivered in a consignment.

(21) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) The merchant:

(i) Deals in goods of that kind under a name other than the name of the person making delivery;

(ii) Is not an auctioneer; and

(iii) Is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) With respect to each delivery, the aggregate value of the goods is $1,000.00 or more at the time of delivery;

(C) The goods are not consumer goods immediately before delivery; and

(D) The transaction does not create a security interest that secures an obligation.

(22) "Consignor" means a person that delivers goods to a consignee in a consignment.

(23) "Consumer debtor" means a debtor in a consumer transaction.

(24) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(25) "Consumer goods transaction" means a consumer transaction in which:

(A) An individual incurs an obligation primarily for personal, family, or household purposes; and

(B) A security interest in consumer goods secures the obligation.

(26) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(27) "Consumer transaction" means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer goods transactions.

(28) "Continuation statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(29) "Debtor" means:

(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) A seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) A consignee.

(30) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(31) "Document" means a document of title or a receipt of the type described in subsection (2) of Code Section 11-7-201.

(32) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(33) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(34) "Equipment" means goods other than inventory, farm products, or consumer goods.

(35) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) Crops grown, growing, or to be grown, including:

(i) Crops produced on trees, vines, and bushes; and

(ii) Aquatic goods produced in aquacultural operations;

(B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) Supplies used or produced in a farming operation; or

(D) Products of crops or livestock in their unmanufactured states.

(36) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(37) "File number" means the number assigned to an initial financing statement pursuant to subsection (a) of Code Section 11-9-519.

(38) "Filing office" means an office designated in Code Section 11-9-501 as the place to file a financing statement.

(39) "Filing office rule" means a rule adopted pursuant to Code Section 11-9-526.

(40) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(41) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying subsections (a) and (b) of Code Section 11-9-502. The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(42) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(43) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter of credit rights, letters of credit, money, and oil, gas,

or other minerals before extraction. The term includes payment intangibles and software.

(44) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(45) "Goods" means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, and (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter of credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(46) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(47) "Health care insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health care goods or services provided or to be provided.

(48) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(49) "Inventory" means goods, other than farm products, which:

(A) Are leased by a person as lessor;

(B) Are held by a person for sale or lease or to be furnished under a contract of service;

(C) Are furnished by a person under a contract of service; or

(D) Consist of raw materials, work in process, or materials used or consumed in a business.

(50) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(51) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(52) "Letter of credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(53) "Lien creditor" means:

(A) A creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) An assignee for benefit of creditors from the time of assignment;

(C) A trustee in bankruptcy from the date of the filing of the petition; or

(D) A receiver in equity from the time of appointment.

(54) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation. The term includes a deed to secure debt.

(55) "New debtor" means a person that becomes bound as debtor under subsection (d) of Code Section 11-9-203 by a security agreement previously entered into by another person.

(56) "New value" means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(57) "Noncash proceeds" means proceeds other than cash proceeds.

(58) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the

obligation. The term does not include issuers or nominated persons under a letter of credit.

(59) "Original debtor," except as used in subsection (c) of Code Section 11-9-310, means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under subsection (d) of Code Section 11-9-203.

(60) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(61) "Person related to," with respect to an individual, means:

(A) The spouse of the individual;

(B) A brother, brother-in-law, sister, or sister-in-law of the individual;

(C) An ancestor or lineal descendant of the individual or the individual's spouse; or

(D) Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(62) "Person related to," with respect to an organization, means:

(A) A person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) An officer or director of, or a person performing similar functions with respect to, the organization;

(C) An officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A) of this paragraph;

(D) The spouse of an individual described in subparagraph (A), (B), or (C) of this paragraph; or

(E) An individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C), or (D) of this paragraph and shares the same home with the individual.

(63) "Proceeds," except as used in subsection (d) of Code Section 11-9-609, means the following property:

(A) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(B) Whatever is collected on, or distributed on account of, collateral;

(C) Rights arising out of collateral;

(D) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to the collateral; or

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to the collateral.

(64) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(65) "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Code Sections 11-9-620, 11-9-621, and 11-9-622.

(66) "Public finance transaction" means a secured transaction in connection with which:

(A) Debt securities are issued;

(B) All or a portion of the securities issued have an initial stated maturity of at least five years; and

(C) The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(67) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(68) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(69) "Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized.

(70) "Secondary obligor" means an obligor to the extent that:

(A) The obligor's obligation is secondary; or

(B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(71) "Secured party" means:

(A) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) A person that holds an agricultural lien;

(C) A consignor;

(D) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) A person that holds a security interest arising under Code Section 11-2-401, 11-2-505, or subsection (3) of Code Section 11-2-711, subsection (5) of Code Section 11-2A-508, Code Section 11-4-210, or Code Section 11-5-118.

(72) "Security agreement" means an agreement that creates or provides for a security interest.

(73) "Send," in connection with a record or notification, means:

(A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) To cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A) of this paragraph.

(74) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(75) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(76) "Supporting obligation" means a letter of credit right or secondary obligation that supports the payment or performance of an

account, chattel paper, a document, a general intangible, an instrument, or investment property.

(77) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(78) "Termination statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(79) "Transmitting utility" means a person primarily engaged in the business of:

(A) Operating a railroad, subway, street railway, or trolley bus;

(B) Transmitting communications electrically, electromagnetically, or by light;

(C) Transmitting goods by pipeline or sewer; or

(D) Transmitting or producing and transmitting electricity, steam, gas, or water.

(b) **Definitions in other articles.** "Control" as provided in Code Section 11-7-106 and the following definitions in other articles apply to this article:

"Applicant." Code Section 11-5-102.

"Beneficiary." Code Section 11-5-102.

"Broker." Code Section 11-8-102.

"Certificated security." Code Section 11-8-102.

"Check." Code Section 11-3-104.

"Clearing corporation." Code Section 11-8-102.

"Contract for sale." Code Section 11-2-106.

"Customer." Code Section 11-4-104.

"Entitlement holder." Code Section 11-8-102.

"Financial asset." Code Section 11-8-102.

"Holder in due course." Code Section 11-3-302.

"Issuer" (with respect to a letter of credit or letter of credit right). Code Section 11-5-102.

"Issuer" (with respect to a security). Code Section 11-8-201.

"Issuer" (with respect to documents of title). Code Section 11-7-102.

"Lease." Code Section 11-2A-103.

"Lease agreement." Code Section 11-2A-103.

"Lease contract." Code Section 11-2A-103.

"Leasehold interest." Code Section 11-2A-103.

"Lessee." Code Section 11-2A-103.

"Lessee in ordinary course of business." Code Section 11-2A-103.

"Lessor." Code Section 11-2A-103.

"Lessor's residual interest." Code Section 11-2A-103.

"Letter of credit." Code Section 11-5-102.

"Merchant." Code Section 11-2-104.

"Negotiable instrument." Code Section 11-3-104.

"Nominated person." Code Section 11-5-102.

"Note." Code Section 11-3-104.

"Proceeds of a letter of credit." Code Section 11-5-114.

"Prove." Code Section 11-3-103.

"Sale." Code Section 11-2-106.

"Securities account." Code Section 11-8-501.

"Securities intermediary." Code Section 11-8-102.

"Security." Code Section 11-8-102.

"Security certificate." Code Section 11-8-102.

"Security entitlement." Code Section 11-8-102.

"Uncertificated security." Code Section 11-8-102.

(c) **Article 1 definitions and principles.** Article 1 of this title contains general definitions and principles of construction and interpretation applicable throughout this article. (Code 1981, § 11-9-102, enacted by Ga. L. 2001, p. 362, § 1; Ga. L. 2002, p. 995, § 3; Ga. L. 2010, p. 481, § 2-19/HB 451.)

The 2010 amendment, effective May 27, 2010, in subsection (b), substituted the present introductory paragraph for the former provisions, which read: "Other definitions applying to this article and the Code sections in which they appear are" and added the provisions on "'Issuer' (with respect to documents of title)". See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481,

§ 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

JUDICIAL DECISIONS

Analysis

General Consideration

Determination of good faith for jury. — Given the disputed evidence as to the good faith of a transaction, summary judgment awards on the priorities of security interests were not appropriate as the matter had to be remanded to the trial court because the good faith of a transaction was peculiarly a question for the trier of fact. Farm Credit of Northwest Fla., ACA v. Easom Peanut Co., 312 Ga. App. 374, 718 S.E.2d 590 (2011), cert. denied, 2012 Ga. LEXIS 315 (Ga. 2012).

Cited in Bank of Dawson v. Worth Gin Co., 295 Ga. App. 256, 671 S.E.2d 279 (2008).

Security Agreement

No writing established. — Creditor did not establish that the creditor had a valid security interest under Georgia law because there was no evidence of a specific writing, signed by the debtor, that reflected an intent to create a security interest, and that reasonably identified the personal property as collateral. First Nat'l Bank v. Alba (In re Alba), 429 B.R. 353 (Bankr. N.D. Ga. 2008).

Secured Party

Parent was not secured party and had no standing. — No public record allowed a criminal defendant's parent to perfect an implied trust (based on the parent's allegation that the parent paid for cars but titled them in the son's name for insurance purposes) against bona fide purchaser for value; so, in a O.C.G.A. § 16-13-49 forfeiture proceeding of two cars, the parent was not the statutory "owner" or "interest holder" as those terms were defined in O.C.G.A. § 11-9-102 and O.C.G.A. § 16-13-49(a)(7), (n)(3), (o)(3), (a)(6), and the parent thus lacked standing to contest the forfeiture. McFarley v. State of Ga., 268 Ga. App. 621, 602 S.E.2d 341 (2004).

Cited in Shepard v. State of Ga., 267 Ga. App. 604, 600 S.E.2d 691 (2004); Motors Acceptance Corp. v. Rozier, 278 Ga. 52, 597 S.E.2d 367 (2004).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Consignment, 1 POF2d 223.

11-9-103. Purchase money security interest; application of payments; burden of establishing.

Law reviews. — For article, "The Fourth Annual Emory Bankruptcy Developments Journal Symposium, March 1, 2007: Consumer Bankruptcy Panel: Selected Hot BAPCPA Topics," see 23 Bank. Dev. J. 517 (2007). For article, "Eleventh Circuit Survey: January 1, 2008 — December 31, 2008: Article: Bankruptcy," see 60 Mercer L. Rev. 1141 (2009).

JUDICIAL DECISIONS

Additional items purchased with collateral. — Simultaneous purchase on credit of a vehicle and an extended service contract, and payment of a documentary fee and a certificate of title fee, did not transform the secured creditor's claim into a non-purchase money security interest, disqualifying its claim for treatment under the hanging paragraph at the end of 11 U.S.C. § 1325(a), because the cost of the additional items was part of the price of the vehicle. In re Murray, 352 B.R. 340 (Bankr. M.D. Ga. 2006).

Purchase money interest in negative equity financed as part of trade-in. — Because the definition of "cash sales price" under O.C.G.A. § 11-9-103(a)(2) included any amount paid to the buyer or to a third party to satisfy a lease on or a lien on or a security interest in a motor vehicle used as a trade-in, that entire amount was included in the purchase money security interest under 11 U.S.C. § 1325(a). In re Graupner, 356 B.R. 907 (Bankr. M.D. Ga. 2006), aff'd, 2007 U.S. Dist. LEXIS 46144 (M.D. Ga. 2007).

Monies paid on debtor's behalf for an extended service contract and gap insurance were part of the purchase price of the debtor's vehicle for purposes of O.C.G.A. § 11-9-103 and the unnumbered, hanging paragraph following 11 U.S.C. § 1325(a)(9). The service contract was a charge for "servicing" the motor vehicle under O.C.G.A § 10-1-31(a)(1), and applying the close nexus standard in § 11-9-103 led the court to believe that gap insurance was also included in the purchase money security interest. In re Spratling, 377 B.R. 941 (Bankr. M.D. Ga. 2007).

Because a debtor purchased a vehicle for personal use within 910 days of filing a bankruptcy petition under 11 U.S.C. § 1325(a), the cramdown provision of 11 U.S.C. § 506 did not apply; instead, O.C.G.A. § 11-9-103 determined that the purchase money security interest included the negative equity of a trade-in that was integral to the sales transaction. Graupner v. Nuvell Credit Corp., No. 4:07-CV-37 (CDL), 2007 U.S. Dist. LEXIS 46144 (M.D. Ga. June 26, 2007), aff'd, 537 F.3d 1295 (11th Cir. 2008).

Under O.C.G.A. §§ 10-1-31(a) and 11-9-103, negative equity in a debtor's trade-in vehicle was properly regarded as a purchase money security interest under the hanging paragraph referencing 11 U.S.C. § 1325(a)(5) in that there was a close nexus to the purchase of a vehicle for personal use within 910 days of filing for Chapter 13 relief. Thus, 11 U.S.C. § 506 did not apply to cram down the creditor's secured claim. Graupner v. Nuvell Credit Corp. (In re Graupner), 537 F.3d 1295 (11th Cir. 2008).

11-9-108. Sufficiency of description.

JUDICIAL DECISIONS

Description of collateral in security agreements.

Bankruptcy court found that: (1) the equipment in issue was incorrectly described in both the security agreement and the financing statement; and (2) the rights of the debtor, as a hypothetical lien creditor, were superior to the rights of the

creditor. Deere Credit, Inc. v. Pickle Logging, Inc., 286 Bankr. 181 (Bankr. M.D. Ga. 2002).

Subpart 2

Applicability of Article

11-9-109. Scope.

JUDICIAL DECISIONS

Ordinary meaning of "unsecured". — Ordinary meaning of "unsecured" is that there is no security interest that can be effective against third parties under the Georgia Uniform Commercial Code, specifically O.C.G.A. § 11-9-109. In re Estate of Sims, 259 Ga. App. 786, 578 S.E.2d 498 (2003).

Bank's right of setoff superior. — In a case predicated on the Georgia tort law of conversion, a district court's entry of summary judgment in favor of a bank was affirmed because O.C.G.A. §§ 11-9-109(a)(1) and (d)(10)(A), and 11-9-340 governed the effectiveness of setoff rights in deposit accounts, brought the case expressly within the authority of the Uniform Commercial Code, and provided that the bank's setoff right was superior to any security interest of a company in a predecessor company's deposited funds. Eleison Composites, LLC v. Wachovia Bank, N.A., No. 07-10206, 2008 U.S. App. LEXIS 5045 (11th Cir. Mar. 7, 2008) (Unpublished).

Insurance proceeds subject to lender's security agreement. — Bankruptcy court found that under the security deed the credit company held a valid security interest in the destroyed property and the security deed provided sufficient language to grant the credit company a security interest in the proceeds of the collateral, including any insurance proceeds. Altegra Credit Co. v. Ford Motor Credit Co. (In re Brantley), 286 Bankr. 918 (Bankr. S.D. Ga. 2002).

Statute of limitations. — While it appeared that O.C.G.A. § 9-3-24, rather than O.C.G.A. § 11-2-725, would most likely apply to defendant collection attorney's state court deficiency action against plaintiff consumer, and it was not for the federal court to say what the Georgia courts would hold, the uncertainty meant there was no intentional unfair conduct and the consumer's Fair Debt Collection Practices Act claim was dismissed. Almand v. Reynolds & Robin, P.C., 485 F. Supp. 2d 1361 (M.D. Ga. 2007).

Cited in All Fleet Refinishing, Inc. v. W. Ga. Nat'l Bank, 280 Ga. App. 676, 634 S.E.2d 802 (2006).

11-9-110. Security interests arising under Article 2 or 2A of this title.

JUDICIAL DECISIONS

Perfected security interest had priority over attempted reservation of title. — Peanut growers' attempted reservation of title when the growers' delivered peanuts to a peanut company at a peanut broker's direction amounted to a security interest; however, the growers never perfected the growers' security interests. A cooperative bank's security interest in the peanuts was perfected as the grower had filed financing statements and the security interest had attached so that the bank's perfected security interest had priority over the growers' unperfected security interests. Farm Credit of Northwest Fla., ACA v. Easom Peanut Co., 312 Ga. App. 374, 718 S.E.2d 590 (2011), cert. denied, 2012 Ga. LEXIS 315 (Ga. 2012).

Term "possession" as used in O.C.G.A. § 11-9-110 includes constructive possession. — Farm Credit of Northwest Fla., ACA v. Easom Peanut Co., 312 Ga. App. 374, 718 S.E.2d 590 (2011), cert. denied, 2012 Ga. LEXIS 315 (Ga. 2012).

PART 2

EFFECTIVENESS OF SECURITY AGREEMENT; ATTACHMENT OF SECURITY INTEREST; RIGHTS OF PARTIES TO SECURITY AGREEMENT

Subpart 1

Effectiveness and Attachment

11-9-203. Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.

(a) **Attachment.** A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) **Enforceability.** Except as otherwise provided in subsections (c) through (i) of this Code section, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) Value has been given;

(2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) One of the following conditions is met:

(A) The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) The collateral is not a certificated security and is in the possession of the secured party under Code Section 11-9-313 pursuant to the debtor's security agreement;

(C) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Code Section 11-8-301 pursuant to the debtor's security agreement; or

(D) The collateral is deposit accounts, electronic chattel paper, investment property, letter of credit rights, or electronic documents, and the secured party has control under Code Section

11-7-106, 11-9-104, 11-9-105, 11-9-106, or 11-9-107 pursuant to the debtor's security agreement.

(c) **Other provisions of this title.** Subsection (b) of this Code section is subject to Code Section 11-4-210 on the security interest of a collecting bank, Code Section 11-5-118 on the security interest of a letter of credit issuer or nominated person, Code Section 11-9-110 on a security interest arising under Article 2 or 2A of this title, and Code Section 11-9-206 on security interests in investment property.

(d) **When person becomes bound by another person's security agreement.** A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this article or by contract:

(1) The security agreement becomes effective to create a security interest in the person's property; or

(2) The person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) **Effect of new debtor becoming bound.** If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) The agreement satisfies paragraph (3) of subsection (b) of this Code section with respect to existing or after acquired property of the new debtor to the extent the property is described in the agreement; and

(2) Another agreement is not necessary to make a security interest in the property enforceable.

(f) **Proceeds and supporting obligations.** The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by Code Section 11-9-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) **Lien securing right to payment.** The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) **Security entitlement carried in securities account.** The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) **Commodity contracts carried in commodity account.** The attachment of a security interest in a commodity account is also

attachment of a security interest in the commodity contract carried in the commodity account. (Code 1981, § 11-9-203, enacted by Ga. L. 2001, p. 362, § 1; Ga. L. 2010, p. 481, § 2-20/HB 451.)

The 2010 amendment, effective May 27, 2010, in subparagraph (b)(3)(D), substituted "letter of credit rights, or electronic documents," for "or letter of credit rights," and inserted "11-7-106,". See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

JUDICIAL DECISIONS

Analysis

General Consideration

Insurance benefits considered "proceeds" and subject to lender's security interest.

Bankruptcy court found that under the security deed the credit company held a valid security interest in the destroyed property and the security deed provided sufficient language to grant the credit company a security interest in the proceeds of the collateral, including any insurance proceeds. Altegra Credit Co. v. Ford Motor Credit Co. (In re Brantley), 286 Bankr. 918 (Bankr. S.D. Ga. 2002).

Security interest in the proceeds. — After a Chapter 13 debtors' vehicle was destroyed in an accident after confirmation of the plan, the failure of the secured creditor to introduce the insurance policy into evidence, meant that the court could not determine if the creditor had an independent right to the proceeds in addition to its Uniform Commercial Code Article 9 rights; the creditor proved only that it had a security interest in the proceeds and, therefore, Article 9 governed and the insurance payout was proceeds of the collateral. In re Jones, No. 99-43196, 2004 Bankr. LEXIS 1520 (Bankr. S.D. Ga. June 4, 2004).

Language held sufficient to prove security interest. — Bank that extended credit to a debtor before the debtor declared Chapter 13 bankruptcy, so the debtor could purchase merchandise using a credit card, had an enforceable security interest under O.C.G.A. § 11-9-203 in goods the debtor obtained using the credit card, and a plan the debtor filed for repaying creditors could not be confirmed under 11 U.S.C. § 1325 because the plan treated the bank's claim as an unsecured claim. An application the debtor completed when the debtor applied for the credit card stated that the debtor granted a business a purchase money security interest in goods purchased on the debtor's account. Thomas G. v. HSBC Nev., N.A. (In re

Thomas G.), No. 09-73223-pwb, 2009 Bankr. LEXIS 4325 (Bankr. N.D. Ga. Dec. 21, 2009) (Unpublished).

Passage of title. — When the peanut growers completed the performance of the growers' duties under the growers' contracts with a peanut broker by delivering the growers' peanuts to a peanut company, title passed to the broker. Farm Credit of Northwest Fla., ACA v. Easom Peanut Co., 312 Ga. App. 374, 718 S.E.2d 590 (2011), cert. denied, 2012 Ga. LEXIS 315 (Ga. 2012).

Sufficiency of Writing

Requirements, generally.

Two creditors who loaned money to a debtor to buy a truck and who were named by the debtor as a "lienholder" on the debtor's application for a title won a ruling sustaining their objection to the debtor's proposed Chapter 13 plan in which the creditors' interest was treated as an unsecured interest, because Georgia law did not require the use of "magic words" to create an enforceable security interest and because the three documents signed by the debtor in connection with the transaction satisfied the requirements in O.C.G.A. § 11-9-203(b)(3)(A) for the creation of an enforceable security interest, and were consistent with the debtor's testimony that the debtor knew that the creditors would have a lien on the debtor's truck. In re Flager, No. 07-50293-JDW, 2007 Bankr. LEXIS 2027 (Bankr. M.D. Ga. June 8, 2007).

Signature on security agreement required for aircraft. — In a preferential transfer action under 11 U.S.C. § 547(b), while the trustee satisfied the trustee's burden as to many of the elements and was entitled to a partial summary judgment as to those elements, the trustee was not entitled to summary judgment under 11 U.S.C. § 547(b)(5) regarding the debtor's conveyance of an aircraft because there were material fact issues as to the existence of a security agreement, the amount of the debt, the value of the aircraft, and whether the security interest was filed with the Federal Aviation Administration (FAA). In this case, pursuant to O.C.G.A. § 11-9-203(b)(3)(A), in order to have an enforceable security interest, there had to be a signed security agreement. Kelley v. Murphy (In re McConnell), 455 B.R. 824 (Bankr. M.D. Ga. 2011).

Written security agreement not established. — Creditor was not entitled to relief from an automatic stay under 11 U.S.C. § 362 when the creditor could not provide evidence of a written security agreement signed by the debtor for the personal property at issue and the debtor testified that the debtor never signed or intended to give a security interest in the personal property. First Nat'l Bank v. Alba (In re Alba), 429 B.R. 353 (Bankr. N.D. Ga. 2008).

Security agreement in aircraft not established. — When a trustee sought to avoid as a preferential transfer a debtor's conveyance of an aircraft to defendants, summary judgment was inappropriate as to 11 U.S.C. § 547(b)(5) because there were material fact issues as to the existence of a security agreement, the amount of the debt, the value of the aircraft, and whether the security interest in the aircraft was filed with the Federal Aviation Administration. Kelley v. Murphy (In re McConnell), No. 11-5071, 2011 Bankr. LEXIS 3281 (Bankr. M.D. Ga. Aug. 18, 2011).

Attachment

Date of signing contract determines rights. — After the debtor executed three contracts prior to filing the debtor's Chapter 11 bankruptcy petition, the date the contracts were signed determined whether the proceeds of the contracts were subject to the security interest of the debtor's pre-petition creditor under 11 U.S.C. § 552(b)(1) and O.C.G.A. § 11-9-203. Diversified Traffic Servs. v. Presidential Fin. Corp. (In re Diversified Traffic Servs.), No. 09-51227, 2010 Bankr. LEXIS 1790 (Bankr. S.D. Ga. May 21, 2010).

Subpart 2

Rights and Duties

11-9-207. Rights and duties of secured party having possession or control of collateral.

(a) **Duty of care when secured party in possession.** Except as otherwise provided in subsection (d) of this Code section, a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) **Expenses, risks, duties, and rights when secured party in possession.** Except as otherwise provided in subsection (d) of this Code section, if a secured party has possession of collateral:

(1) Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) The secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) The secured party may use or operate the collateral:

(A) For the purpose of preserving the collateral or its value;

(B) As permitted by an order of a court having competent jurisdiction; or

(C) Except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) **Duties and rights when secured party in possession or control.** Except as otherwise provided in subsection (d) of this Code section, a secured party having possession of collateral or control of collateral under Code Section 11-7-106, 11-9-104, 11-9-105, 11-9-106, or 11-9-107:

(1) May hold as additional security any proceeds, except money or funds, received from the collateral;

(2) Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) May create a security interest in the collateral.

(d) **Buyer of certain rights to payment.** If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(1) Subsection (a) of this Code section does not apply unless the secured party is entitled under an agreement:

(A) To charge back uncollected collateral; or

(B) Otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) Subsections (b) and (c) of this Code section do not apply. (Code 1981, § 11-9-207, enacted by Ga. L. 2001, p. 362, § 1; Ga. L. 2010, p. 481, § 2-21/HB 451.)

The 2010 amendment, effective May 27, 2010, inserted "11-7-106," in the introductory paragraph of subsection (c). See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

JUDICIAL DECISIONS

Cited in Motors Acceptance Corp. v. Rozier, 278 Ga. 52, 597 S.E.2d 367 (2004).

11-9-208. Additional duties of secured party having control of collateral.

(a) **Applicability of Code section.** This Code section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) **Duties of secured party after receiving demand from debtor.** Within ten days after receiving an authenticated demand by the debtor:

(1) A secured party having control of a deposit account under paragraph (2) of subsection (a) of Code Section 11-9-104 shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) A secured party having control of a deposit account under paragraph (3) of subsection (a) of Code Section 11-9-104 shall:

(A) Pay the debtor the balance on deposit in the deposit account; or

(B) Transfer the balance on deposit into a deposit account in the debtor's name;

(3) A secured party, other than a buyer, having control of electronic chattel paper under Code Section 11-9-105 shall:

(A) Communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(B) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) A secured party having control of investment property under paragraph (2) of subsection (d) of Code Section 11-8-106 or subsection (b) of Code Section 11-9-106 shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;

(5) A secured party having control of a letter of credit right under Code Section 11-9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; and

(6) A secured party having control of an electronic document shall:

(A) Give control of the electronic document to the debtor or its designated custodian;

(B) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authenticated copy which add or change an identified assignee of the authoritative copy without the consent of the secured party. (Code 1981, § 11-9-208, enacted by Ga. L. 2001, p. 362, § 1; Ga. L. 2010, p. 481, § 2-22/HB 451.)

The 2010 amendment, effective May 27, 2010, deleted "and" at the end of paragraph (b)(4); substituted "; and" for a period at the end of paragraph (b)(5); and added paragraph (b)(6). See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

PART 3

PERFECTION AND PRIORITY

Subpart 1

Law Governing Perfection and Priority

11-9-301. Law governing perfection and priority of security interests.

Except as otherwise provided in Code Sections 11-9-303 through 11-9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this Code section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral;

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral;

(3) Except as otherwise provided in paragraph (4) of this Code section, while tangible negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) Perfection of a security interest in the goods by filing a fixture filing;

(B) Perfection of a security interest in timber to be cut;

(C) Perfection of a security interest in crops; and

(D) The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral; and

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral. (Code 1981, § 11-9-301, enacted by Ga. L. 2001, p. 362, § 1; Ga. L. 2010, p. 481, § 2-23/HB 451.)

The 2010 amendment, effective May 27, 2010, inserted "tangible" in the middle of the introductory language of paragraph (3). See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

11-9-303. Law governing perfection and priority of security interests in goods covered by a certificate of title.

JUDICIAL DECISIONS

Cited in Provident Bank v. Morequity, Inc., 262 Ga. App. 331, 585 S.E.2d 625 (2003).

Subpart 2

Perfection

11-9-308. When security interest or agricultural lien is perfected; continuity of perfection.

JUDICIAL DECISIONS

Perfected security interest had priority over attempted reservation of title. — Peanut growers' attempted reservation of title when the growers delivered peanuts to a peanut company at a peanut broker's direction amounted to a security interest; however, the growers never perfected the growers' security interests. a cooperative bank's security interest in the peanuts was perfected as the growers had filed financing statements and the security interest had attached so that the bank's perfected security interest had priority over the growers' unperfected security interests. Farm Credit of Northwest Fla., ACA v. Easom Peanut Co., 312 Ga. App. 374, 718 S.E.2d 590 (2011), cert. denied, 2012 Ga. LEXIS 315 (Ga. 2012).

11-9-309. Security interest perfected upon attachment.

RESEARCH REFERENCES

ALR. — Creation and perfection of security interests in insurance proceeds under Article 9 of Uniform Commercial Code, 47 ALR6th 347.

11-9-310. When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.

(a) **General rule; perfection by filing.** Except as otherwise provided in subsection (b) of this Code section and subsection (b) of Code Section 11-9-312, a financing statement must be filed to perfect all security interests and agricultural liens.

(b) **Exceptions; filing not necessary.** The filing of a financing statement is not necessary to perfect a security interest:

(1) That is perfected under subsection (d), (e), (f), or (g) of Code Section 11-9-308;

(2) That is perfected under Code Section 11-9-309 when it attaches;

(3) In property subject to a statute, regulation, or treaty described in subsection (a) of Code Section 11-9-311;

(4) In goods in possession of a bailee which is perfected under paragraph (1) or (2) of subsection (d) of Code Section 11-9-312;

(5) In certificated securities, documents, goods, or instruments which is perfected without filing, control, or possession under subsection (e), (f), or (g) of Code Section 11-9-312;

(6) In collateral in the secured party's possession under Code Section 11-9-313;

(7) In a certificated security which is perfected by delivery of the security certificate to the secured party under Code Section 11-9-313;

(8) In deposit accounts, electronic chattel paper, electronic documents, investment property, or letter of credit rights which is perfected by control under Code Section 11-9-314;

(9) In proceeds which is perfected under Code Section 11-9-315; or

(10) That is perfected under Code Section 11-9-316.

(c) **Assignment of perfected security interest.** If a secured party assigns a perfected security interest or agricultural lien, a filing under this article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor. (Code 1981, § 11-9-310, enacted by Ga. L. 2001, p. 362, § 1; Ga. L. 2010, p. 481, § 2-24/HB 451.)

The 2010 amendment, effective May 27, 2010, inserted ", control," in paragraph (b)(5); and inserted "electronic documents," in paragraph (b)(8). See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

JUDICIAL DECISIONS

Analysis

General Consideration

PERFECTION BY POSSESSION

General Consideration

Pre-petition enforcement. — Creditor had a valid post-petition lien in rents, profits, and proceeds from a Chapter 11 debtor's hotel operations, though the creditor took no pre-petition enforcement action under Georgia law, as its lien in the pre-petition rents was valid from the time of recording, and the lien in post-petition rents was valid from the time of the bankruptcy filing. In re Resort Inns, Inc., No. 04-41721, 2004 Bankr. LEXIS 1580 (Bankr. S.D. Ga. Aug. 30, 2004).

Perfection by Possession

Perfected security interest had priority over attempted reservation of title. — Peanut growers' attempted reservation of title when the growers delivered peanuts to a peanut company at a peanut broker's direction amounted to a security interest; however, the growers never perfected the growers' security interests. A cooperative bank's security interest in the peanuts was perfected as the bank had filed financing statements and the security interest had attached so that the bank's perfected security interest had priority over the growers' unperfected security interests. Farm Credit of Northwest Fla., ACA v. Easom Peanut Co., 312 Ga. App. 374, 718 S.E.2d 590 (2011), cert. denied, 2012 Ga. LEXIS 315 (Ga. 2012).

RESEARCH REFERENCES

ALR. — Creation and perfection of security interests in insurance proceeds under Article 9 of Uniform Commercial Code, 47 ALR6th 347.

11-9-312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter of credit rights, and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.

(a) **Perfection by filing permitted.** A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) **Control or possession of certain collateral.** Except as otherwise provided in subsections (c) and (d) of Code Section 11-9-315 for proceeds:

(1) A security interest in a deposit account may be perfected only by control under Code Section 11-9-314;

(2) Except as otherwise provided in subsection (d) of Code Section 11-9-308, a security interest in a letter of credit right may be perfected only by control under Code Section 11-9-314; and

(3) A security interest in money may be perfected only by the secured party's taking possession under Code Section 11-9-313.

(c) **Goods covered by negotiable document.** While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) A security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) A security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) **Goods covered by nonnegotiable document.** While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) Issuance of a document in the name of the secured party;

(2) The bailee's receipt of notification of the secured party's interest; or

(3) Filing as to the goods.

(e) **Temporary perfection; new value.** A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of 20 days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) **Temporary perfection; goods or documents made available to debtor.** A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) Ultimate sale or exchange; or

(2) Loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) **Temporary perfection; delivery of security certificate or instrument to debtor.** A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) Ultimate sale or exchange; or

(2) Presentation, collection, enforcement, renewal, or registration of transfer.

(h) **Expiration of temporary perfection.** After the 20 day period specified in subsection (e), (f), or (g) of this Code section expires, perfection depends upon compliance with this article. (Code 1981, § 11-9-312, enacted by Ga. L. 2001, p. 362, § 1; Ga. L. 2010, p. 481, § 2-25/HB 451.)

The 2010 amendment, effective May 27, 2010, inserted "or control" in the middle of subsection (e). See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

RESEARCH REFERENCES

ALR. — Perfection of security interests by possession, delivery, or control under revised Article 9 of Uniform Commercial Code, 53 ALR6th 159.

11-9-313. When possession by or delivery to secured party perfects security interest without filing.

(a) **Perfection by possession or delivery.** Except as otherwise provided in subsection (b) of this Code section, a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under Code Section 11-8-301.

(b) **Goods covered by certificate of title.** With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in subsection (d) of Code Section 11-9-316.

(c) **Collateral in possession of person other than debtor.** With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) The person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) **Time of perfection by possession; continuation of perfection.** If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) **Time of perfection by delivery; continuation of perfection.** A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under Code Section 11-8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) **Acknowledgment not required.** A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) **Effectiveness of acknowledgment; no duties or confirmation.** If a person acknowledges that it holds possession for the secured party's benefit:

(1) The acknowledgment is effective under subsection (c) of this Code section or subsection (a) of Code Section 11-8-301, even if the acknowledgment violates the rights of a debtor; and

(2) Unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) **Secured party's delivery to person other than debtor.** A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) To hold possession of the collateral for the secured party's benefit; or

(2) To redeliver the collateral to the secured party.

(i) **Effect of delivery under subsection (h) of this Code section; no duties or confirmation.** A secured party does not relinquish possession, even if a delivery under subsection (h) of this Code section violates the rights of a debtor. A person to which collateral is delivered under subsection (h) of this Code section does not owe any duty to the secured party and is not required to confirm the delivery to another

person unless the person otherwise agrees or law other than this article otherwise provides. (Code 1981, § 11-9-313, enacted by Ga. L. 2001, p. 362, § 1; Ga. L. 2010, p. 481, § 2-26/HB 451.)

The 2010 amendment, effective May 27, 2010, inserted "tangible" in the middle of the first sentence of subsection (a). See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

RESEARCH REFERENCES

ALR. — Perfection of security interests by possession, delivery, or control under revised Article 9 of Uniform Commercial Code, 53 ALR6th 159.

11-9-314. Perfection by control.

(a) **Perfection by control.** A security interest in investment property, deposit accounts, letter of credit rights, electronic chattel paper, or electronic documents may be perfected by control of the collateral under Code Section 11-7-106, 11-9-104, 11-9-105, 11-9-106, or 11-9-107.

(b) **Specified collateral; time of perfection by control; continuation of perfection.** A security interest in deposit accounts, electronic chattel paper, letter of credit rights, or electronic documents is perfected by control under Code Section 11-7-106, 11-9-104, 11-9-105, or 11-9-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) **Investment property; time of perfection by control; continuation of perfection.** A security interest in investment property is perfected by control under Code Section 11-9-106 from the time the secured party obtains control and remains perfected by control until:

(1) The secured party does not have control; and

(2) One of the following occurs:

(A) If the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) If the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) If the collateral is a security entitlement, the debtor is or becomes the entitlement holder. (Code 1981, § 11-9-314, enacted by Ga. L. 2001, p. 362, § 1; Ga. L. 2010, p. 481, § 2-27/HB 451.)

The 2010 amendment, effective May 27, 2010, in subsection (a), substituted "electronic chattel paper, or electronic documents" for "or electronic chattel paper" and inserted "11-7-106,"; and, in subsection (b), substituted "letter of credit rights, or electronic documents" for "or letter of credit rights" near the beginning and inserted "11-7-106". See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

RESEARCH REFERENCES

ALR. — Perfection of security interests by possession, delivery, or control under revised Article 9 of Uniform Commercial Code, 53 ALR6th 159.

11-9-315. Secured party's rights on disposition of collateral and in proceeds.

JUDICIAL DECISIONS

Proceeds of collateral.

Creditor that had purchased the debtor's accounts receivable did not hold the first priority lien against the assets, and could not assert equitable subrogation, because the creditor exercised inexcusable neglect in failing to perfect the creditor's own lien. Debtor's estate retained an interest in receivables under O.C.G.A. § 11-9-315(a)(1). Kerr v. Commer. Credit Group, Inc. (In re Siskey Hauling Co.), 456 B.R. 597 (Bankr. N.D. Ga. 2011).

Lien attached to proceeds.

As a cotton gin bought a farmer's cotton crop with actual knowledge, as defined by O.C.G.A. § 11-1-201(25), (27), of a bank's security interest therein, but still withheld some of the proceeds of the sale under O.C.G.A. § 11-9-315(a)(1), the gin was liable to the bank for conversion and was not entitled to summary judgment. Bank of Dawson v. Worth Gin Co., 295 Ga. App. 256, 671 S.E.2d 279 (2008).

Debtor not a fiduciary. — Where a farmer did not require that the proceeds of the debtor's sales of the farmer's seeds be kept in a separate account, and the debtor paid the debtor's company's operating expenses with the proceeds of the sale of the farmer's seeds, the debtor was not a fiduciary under 11 U.S.C. § 523(a)(4) and the debt was discharged in the debtor's bank-

ruptcy; neither O.C.G.A. § 11-9-315(a)(1) nor O.C.G.A. § 11-7-204(1) imposed any fiduciary duties on the debtor. Bennett v. Wright, 282 Bankr. 510 (Bankr. M.D. Ga. 2002).

RESEARCH REFERENCES

ALR. — Creation and perfection of security interests in insurance proceeds under Article 9 of Uniform Commercial Code, 47 ALR6th 347.

Subpart 3

Priority

11-9-317. Interests that take priority over or take free of security interest or agricultural lien.

(a) **Conflicting security interests and rights of lien creditors.** A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under Code Section 11-9-322; and

(2) Except as otherwise provided in subsection (e) of this Code section, a person that becomes a lien creditor before the earlier of the time:

(A) The security interest or agricultural lien is perfected; or

(B) A financing statement covering the collateral is filed.

(b) **Buyers that receive delivery.** Except as otherwise provided in subsection (e) of this Code section, a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) **Lessees that receive delivery.** Except as otherwise provided in subsection (e) of this Code section, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) **Licensees and buyers of certain collateral.** A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, electronic documents, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) **Purchase money security interest.** Except as otherwise provided in Code Sections 11-9-320 and 11-9-321, if a person files a

financing statement with respect to a purchase money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing. (Code 1981, § 11-9-317, enacted by Ga. L. 2001, p. 362, § 1; Ga. L. 2010, p. 481, § 2-28/HB 451.)

The 2010 amendment, effective May 27, 2010, inserted "tangible" near the middle of subsection (b); and inserted "electronic documents," in the middle of subsection (d). See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

JUDICIAL DECISIONS

Knowledge of security interest.

As a cotton gin bought a farmer's cotton crop with actual knowledge, as defined by O.C.G.A. § 11-1-201(25), (27), of a bank's security interest therein, but still withheld some of the proceeds of the sale, under O.C.G.A. § 11-9-315(a)(1), the gin was liable to the bank for conversion and was not entitled to summary judgment. Bank of Dawson v. Worth Gin Co., 295 Ga. App. 256, 671 S.E.2d 279 (2008).

11-9-320. Buyer of goods.

JUDICIAL DECISIONS

Sale of collateral. — Bona fide purchaser's, a corporation, purchase of a machine did not fall within an exception to the general rule that a security interest continued after the sale of the collateral, as a similar argument in Superior Bank v. Human Services Employees Credit Union, 252 Ga. App. 489, 556 S.E.2d 155 (2001) was rejected. Intermet Corp. v. Fin. Fed. Credit, Inc., 263 Ga. App. 622, 588 S.E.2d 810 (2003).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Status as "Buyer in Ordinary Course of Business," 2 POF2d 165.

11-9-322. Priorities among conflicting security interests in and agricultural liens on same collateral.

JUDICIAL DECISIONS

Determining priority in destroyed property covered by insurance. — Bankruptcy court found that under the security deed the credit company held a valid security interest in the destroyed property and the security deed provided sufficient language to grant the credit company a security interest in the proceeds of the collateral, including any insurance proceeds. Altegra Credit Co. v. Ford Motor Credit Co. (In re Brantley), 286 Bankr. 918 (Bankr. S.D. Ga. 2002).

Perfected security interest had priority over attempted reservation of title. — Peanut growers' attempted reservation of title when the growers' delivered peanuts to a peanut company at a peanut broker's direction amounted to a security interest; however, the growers never perfected their security interests. A cooperative bank's security interest in the peanuts was perfected as the grower had filed financing statements and the security interest had attached so that the bank's perfected security interest had priority over the growers' unperfected security interests. Farm Credit of Northwest Fla., ACA v. Easom Peanut Co., 312 Ga. App. 374, 718 S.E.2d 590 (2011), cert. denied, 2012 Ga. LEXIS 315 (Ga. 2012).

11-9-322.1. Crops produced with new value.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Value of Growing Crop, 20 POF2d 115.

11-9-333. Priority of certain liens.

(a) **Year's support; property taxes; other state taxes; other taxes or judgments.** Except as is expressly provided to the contrary elsewhere in this article and in subsection (b) of this Code section, a perfected security interest in collateral takes priority over each and all of the liens, claims, and rights described in Code Section 44-14-320, relating to the establishment of certain liens, as now or hereafter amended; former Code Section 53-7-91 as such existed on December 31, 1997, if applicable; and Code Section 53-7-40, relating to the priority of debts against the estate of a decedent, as now or hereafter amended; provided, nevertheless, that:

(1) Year's support to the family, duly set apart in the collateral prior to the perfection of the subject security interest, takes priority over such security interest;

(2) A lien for property taxes duly assessed upon the subject collateral, either prior or subsequent to the perfection of the subject security interest, takes priority over security interest;

(3) A lien for all other state taxes takes priority over such security interest, except where such security interest is perfected by filing a

financing statement relative thereto prior to such time as the execution for such state taxes shall be entered on the execution docket in the place and in the manner provided by law; provided, nevertheless, that, with respect to priority rights between such tax liens and security interests where under this article the same are perfected other than by filing a financing statement, the same shall be determined as provided by law prior to January 1, 1964; and

(4) A lien for other unpaid taxes or a duly rendered judgment of a court having jurisdiction shall have the same priority with regard to a security interest as it would have if the tax lien or judgment were a conflicting security interest within the meaning of Code Section 11-9-322 or an encumbrance within the meaning of Code Section 11-9-334, which conflicting security interest was perfected by filing or which encumbrance arose at the time the tax lien or judgment was duly recorded in the place designated by statute applicable thereto.

(b) **Mechanics' liens on farm machinery.** A mechanics' lien on farm machinery or equipment arising on or after July 1, 1985, shall have priority over any perfected security interest in such farm machinery or equipment unless a financing statement has been filed as provided in Code Section 11-9-501 and unless the financing statement describes the particular piece of farm machinery or equipment to which the perfected security interest applies. Such description may include the make, model, and serial number of the piece of farm machinery or equipment. However, such description shall be sufficient whether or not it is specific if it reasonably identifies what is described and a mistake in such description shall not invalidate the description if it provides a key to identifying the farm machinery or equipment. (Code 1981, § 11-9-333, enacted by Ga. L. 2001, p. 362, § 1; Ga. L. 2011, p. 752, § 11/HB 142.)

The 2011 amendment, effective May 13, 2011, part of an Act to revise, modernize, and correct the Code, substituted "hereafter amended; former Code Section 53-7-91 as such existed on December 31, 1997, if applicable; and Code Section 53-7-40," for "hereafter amended, and Code Section 53-7-91 of the 'Pre-1998 Probate Code,' if applicable, or Code Section 53-7-40 of the 'Revised Probate Code of 1998,'" in subsection (a).

JUDICIAL DECISIONS

Bailee's lien inferior to recorded security interest. — Bailee's lien was inferior to a cooperative banks' duly recorded security interest. Farm Credit of Northwest Fla., ACA v. Easom Peanut Co., 312 Ga. App. 374, 718 S.E.2d 590 (2011), cert. denied, 2012 Ga. LEXIS 315 (Ga. 2012).

11-9-337. Priority of security interests in goods covered by certificate of title.

JUDICIAL DECISIONS

Trial court erred in concluding that the security interest holder had a valid, perfected security interest in the vehicle that the car buyer purchased; ordinarily, its security interest would have been noted on the certificate of title issued at time of purchase, but the state motor vehicle department made a clerical error and did not include the security interest holder's security interest on the certificate of title and, as a result, the buyer was able to purchase the car free of the security interest holder's security interest pursuant to O.C.G.A. § 11-9-337, which provided an exception to enforcement of a security interest pursuant to O.C.G.A. § 40-3-50 for people taking delivery of a good without knowledge of a security interest. Metzger v. Americredit Fin. Svcs., 273 Ga. App. 453, 615 S.E.2d 120 (2005).

11-9-338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in paragraph (5) of subsection (b) of Code Section 11-9-516 which is incorrect at the time the financing statement is filed:

(1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods, instruments, or a security certificate, receives delivery of the collateral. (Code 1981, § 11-9-338, enacted by Ga. L. 2001, p. 362, § 1; Ga. L. 2010, p. 481, § 2-29/HB 451.)

The 2010 amendment, effective May 27, 2010, substituted "tangible chattel paper, tangible documents" for "chattel paper, documents" near the end of paragraph (2). See the editor's note for applicability.

Editor's notes. — Ga. L. 2010, p. 481, § 3-1, not codified by the General Assembly, provides that: "This Act applies to a document of title that is issued or a bailment that arises on or after the effective date of this Act. This Act does not apply to a document of title that is issued or a bailment that arises before the effective date of this Act even if the document of title or bailment would be subject to this Act if the document of title had been issued or bailment had arisen on or after the effective date of this Act. This Act does not apply to a right of action that has accrued before the effective date of this Act." This Act became effective May 27, 2010.

Ga. L. 2010, p. 481, § 3-2, not codified by the General Assembly, provides that: "A document of title issued or a bailment that arises before the effective date of this

Act and the rights, documents, and interests flowing from that document or bailment are governed by any statute or other rule amended or repealed by this Act as if such amendment or repeal had not occurred and may be terminated, completed, consummated, or enforced under that statute or other rule." This Act became effective May 27, 2010.

Subpart 4

Rights of Bank

11-9-340. Effectiveness of right of recoupment or set-off against deposit account.

JUDICIAL DECISIONS

Bank's right of setoff superior. — In a case predicated on the Georgia tort law of conversion, a district court's entry of summary judgment in favor of a bank was affirmed because O.C.G.A. §§ 11-9-109(a)(1) and (d)(10)(A), and 11-9-340 governed the effectiveness of setoff rights in deposit accounts, brought the case expressly within the authority of the Uniform Commercial Code, and provided that the bank's setoff right was superior to any security interest of a company in a predecessor company's deposited funds. Eleison Composites, LLC v. Wachovia Bank, N.A., No. 07-10206, 2008 U.S. App. LEXIS 5045 (11th Cir. Mar. 7, 2008) (Unpublished).

PART 4

RIGHTS OF THIRD PARTIES

11-9-406. Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.

(a) **Discharge of account debtor; effect of notification.** Subject to subsections (b) through (i) of this Code section, an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) **When notification ineffective.** Subject to subsection (h) of this Code section, notification is ineffective under subsection (a) of this Code section:

(1) If it does not reasonably identify the rights assigned;

(2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty

to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) Only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) A portion has been assigned to another assignee; or

(C) The account debtor knows that the assignment to that assignee is limited.

(c) **Proof of assignment.** Subject to subsection (h) of this Code section, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a) of this Code section.

(d) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (e) of this Code section and Code Sections 11-2A-303, 11-9-407, and 53-12-80 through 53-12-83 and subject to subsection (h) of this Code section, a term in an agreement between an account debtor and an assignor or in a promissory note shall be ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) Provides that the assignment, transfer, creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) **Inapplicability of subsection (d) of this Code section to certain sales.** Subsection (d) of this Code section does not apply to the sale of a payment intangible or promissory note.

(f) **Legal restrictions on assignment generally ineffective.** Except as otherwise provided in Code Sections 11-2A-303 and 11-9-407 and subject to subsections (h) and (i) of this Code section, a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an

account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest, in the account or chattel paper; or

(2) Provides that the assignment, transfer, creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) **Paragraph (3) of subsection (b) not waivable.** Subject to subsection (h) of this Code section, an account debtor may not waive or vary its option under paragraph (3) of subsection (b) of this Code section.

(h) **Rule for individual under other law.** This Code section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) **Inapplicability to health care insurance receivable.** This Code section does not apply to an assignment of a health care insurance receivable. (Code 1981, § 11-9-406, enacted by Ga. L. 2001, p. 362, § 1; Ga. L. 2010, p. 579, § 6/SB 131.)

The 2010 amendment, effective July 1, 2010, in the introductory paragraph of subsection (d), substituted "and 53-12-80 through 53-12-83" for "and 53-12-28" in the middle and substituted "shall be" for "is" near the end.

RESEARCH REFERENCES

ALR. — Construction and application of U.C.C. § 9-406 and former U.C.C. § 9-318(3) providing that account debtor is authorized to pay assignor until receipt of notification to pay assignee, 35 ALR6th 437.

11-9-408. Restrictions on assignment of promissory notes, health care insurance receivables, and certain general intangibles ineffective.

(a) **Term restricting assignment generally ineffective.** Except as otherwise provided in subsection (b) of this Code section or in Code Section 53-12-80, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to the assignment or transfer of, or creation,

attachment, or perfection of a security interest in, the promissory note, health care insurance receivable, or general intangible, shall be ineffective to the extent that the term:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment, transfer, creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health care insurance receivable, or general intangible.

(b) **Applicability of subsection (a) of this Code section to sales of certain rights to payment.** Subsection (a) of this Code section applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(c) **Legal restrictions on assignment generally ineffective.** Except as otherwise provided in Code Section 53-12-80, a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health care insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, shall be ineffective to the extent that the rule of law, statute, or regulation:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment, transfer, creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health care insurance receivable, or general intangible.

(d) **Limitation on ineffectiveness under subsections (a) and (c) of this Code section.** To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health care insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) of this Code section would be effective under law other than this article but is ineffective under subsection (a) or (c) of this Code section, the creation, attachment, or perfection of a security interest in the promissory note, health care insurance receivable, or general intangible:

(1) Is not enforceable against the person obligated on the promissory note or the account debtor;

(2) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health care insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health care insurance receivable, or general intangible;

(5) Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) Does not entitle the secured party to enforce the security interest in the promissory note, health care insurance receivable, or general intangible. (Code 1981, § 11-9-408, enacted by Ga. L. 2001, p. 362, § 1; Ga. L. 2010, p. 579, § 7/SB 131.)

The 2010 amendment, effective July 1, 2010, in the introductory paragraphs of subsections (a) and (c), substituted "Code Section 53-12-80" for "Code Section 53-12-28" and substituted "shall be ineffective" for "is ineffective" near the end; deleted "assignment, transfer," preceding "creation, attachment," in paragraph (c)(1); and inserted "assignment, transfer," near the beginning of paragraph (c)(2).

PART 5

FILING

Subpart 1

Filing Office; Contents and Effectiveness of Financing Statement

11-9-501. Filing office.

JUDICIAL DECISIONS

Compliance. — Trial court properly granted summary judgment pursuant to O.C.G.A. § 9-11-56 to colt possessors in a tortious interference with a contract claim by a horse trainer, wherein the trainer alleged that the trainer had a contract to keep the recently born colt in exchange for continued services to the mare's owner; the court found that there was no showing that the possessors were aware of a contract regarding the ownership of the colt, the possessors had followed the necessary procedures for filing a financing statement under O.C.G.A. §§ 11-9-501 through 11-9-504, they had allegedly foreclosed on their lien on the mare by the time that they became aware of the trainer's claim, pursuant to O.C.G.A. § 44-14-490, and the trainer did not record a lien against the colt pursuant to O.C.G.A.

§ 44-14-511. Medlin v. Morganstern, 268 Ga. App. 116, 601 S.E.2d 359 (2004).

11-9-502. Contents of financing statement; real estate mortgages as fixture filings; time of filing financing statement.

JUDICIAL DECISIONS

Security interest not perfected. — Where a search of the county records did not reveal a financing statement due to a mistake in the name of the debtor shown on the financing statement, the security interest in the funds relating to the financing statement was not perfected, and the money was awarded to a judgment creditor in an interpleader action. Receivables Purchasing Co. v. R & R Directional Drilling, L.L.C., 263 Ga. App. 649, 588 S.E.2d 831 (2003).

Because an attorney who handled a closing in the capacity of an escrow agent for the client's business had no actual or constructive notice of a creditor's security interest in the business due to the improper filing pursuant to O.C.G.A. §§ 11-9-502, 11-9-503, and 11-9-506, because the debtor's name was not properly listed and the interest was accordingly not perfected, claims as to conversion of the business closing proceeds failed. All Bus. Corp. v. Choi, 280 Ga. App. 618, 634 S.E.2d 400 (2006).

11-9-503. Name of debtor and secured party.

JUDICIAL DECISIONS

Security interest not perfected. — Where a search of the county records did not reveal a financing statement due to a mistake in the name of the debtor shown on the financing statement, the security interest in the funds relating to the financing statement was not perfected, and the money was awarded to a judgment creditor in an interpleader action. Receivables Purchasing Co. v. R & R Directional Drilling, L.L.C., 263 Ga. App. 649, 588 S.E.2d 831 (2003).

Because an attorney who handled a closing in the capacity of an escrow agent for the client's business had no actual or constructive notice of a creditor's security interest in the business due to the improper filing pursuant to O.C.G.A. §§ 11-9-502, 11-9-503, and 11-9-506, because the debtor's name was not properly listed and the interest was accordingly not perfected, claims as to conversion of the business closing proceeds failed. All Bus. Corp. v. Choi, 280 Ga. App. 618, 634 S.E.2d 400 (2006).

RESEARCH REFERENCES

ALR. — Sufficiency and effectiveness of designation of debtor in financing statement under Uniform Commercial Code §§ 9-503 and 9-506 (revised 2000), 28 ALR6th 461.

11-9-504. Indication of collateral.

JUDICIAL DECISIONS

Construction with O.C.G.A. § 10-1-36. — Trial court properly granted judgment to a debtor, finding that a repossessor failed to comply with O.C.G.A.

§ 10-1-36, and therefore was precluded from collecting a deficiency from the debtor following the sale of the debtor's vehicle, as the repossessor waived strict compliance with § 10-1-36 by admitting that it received a facsimile notice sent by the debtor, and raised no issue as to the timeliness of the notice or whether it was received by the proper person, and failed to send the required notice thereunder to the debtor's address shown on the contract or later designated by the debtor, opting instead to send said notice to a post office box. Consumer Portfolio Servs. v. Rouse, 282 Ga. App. 314, 638 S.E.2d 442 (2006).

Notice not required to lessee of vehicle. — Lessor was not required to comply with the notice provisions of O.C.G.A. §§ 10-1-36 and 11-9-504 because the motor vehicle lease agreement the lessor entered into with the lessee was intended to be a true lease and not to evince a secured transaction; the lessor retained a meaningful reversionary interest in the car because the option price was more than nominal since the purchase option price was approximately one-third of the car's value, and the agreement contained no provision purporting to grant the lessee equity in the vehicle prior to exercise of the purchase option. Aniebue v. Jaguar Credit Corp., 308 Ga. App. 1, 708 S.E.2d 4 (2011).

11-9-506. Effect of errors or omissions.

JUDICIAL DECISIONS

Mistake in name of debtor. — Where a search of the county records did not reveal a financing statement due to a mistake in the name of the debtor shown on the financing statement, the security interest in the funds relating to the financing statement was not perfected, and the money was awarded to a judgment creditor in an interpleader action. Receivables Purchasing Co. v. R & R Directional Drilling, L.L.C., 263 Ga. App. 649, 588 S.E.2d 831 (2003).

Because an attorney who handled a closing in the capacity of an escrow agent for the client's business had no actual or constructive notice of a creditor's security interest in the business due to the improper filing pursuant to O.C.G.A. §§ 11-9-502, 11-9-503, and 11-9-506, because the debtor's name was not properly listed and the interest was accordingly not perfected, claims as to conversion of the business closing proceeds failed. All Bus. Corp. v. Choi, 280 Ga. App. 618, 634 S.E.2d 400 (2006).

RESEARCH REFERENCES

ALR. — Sufficiency and effectiveness of designation of debtor in financing statement under Uniform Commercial Code §§ 9-503 and 9-506 (revised 2000), 28 ALR6th 461.

11-9-515. Duration and effectiveness of financing statement; effect of lapsed financing statement.

JUDICIAL DECISIONS

Cited in Hamburger v. PFM Capital Mgmt., 286 Ga. App. 382, 649 S.E.2d 779 (2007).

Subpart 2

Duties and Operation of Filing Office and Central Indexing System

11-9-523. Information from filing office and central indexing system; sale or license of records.

JUDICIAL DECISIONS

Mistake in name of debtor. — Where a search of the county records did not reveal a financing statement due to a mistake in the name of the debtor shown on the financing statement, the security interest in the funds relating to the financing statement was not perfected, and the money was awarded to a judgment creditor in an interpleader action. Receivables Purchasing Co. v. R & R Directional Drilling, L.L.C., 263 Ga. App. 649, 588 S.E.2d 831 (2003).

11-9-526. Rules.

(a) **Adoption of filing office rules.** The authority shall adopt and publish in print or electronically rules to implement this article, including rules to administer, maintain, and modify the central indexing system. The filing office rules must be consistent with this article.

(b) **Harmonization of rules.** To keep the filing office rules, practices of the filing offices, and practices of the authority in harmony with the rules and practices in other jurisdictions that enact substantially this part, and to keep the technology used by the filing offices and the authority compatible with the technology used in other jurisdictions that enact substantially this part, the authority, so far as is consistent with the purposes, policies, and provisions of this article, in adopting, amending, and repealing filing office rules, shall:

(1) Consult with filing offices in other jurisdictions that enact substantially this part; and

(2) Consult the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators or any successor organization; and

(3) Take into consideration the rules and practices of, and the technology used by, filing offices in other jurisdictions that enact substantially this part.

(c) **Notification system for farm products.** The authority shall not be authorized to adopt rules to implement a notification system for farm products in conformity with the requirements of Section 1324 of the federal Food Security Act of 1985, P.L. 99-198, as now in effect or as hereafter amended, and shall not be authorized to request certification of such notification system by the secretary of the United States Department of Agriculture. (Code 1981, § 11-9-526, enacted by Ga. L. 2001, p. 362, § 1; Ga. L. 2010, p. 838, § 10/SB 388.)

The 2010 amendment, effective June 3, 2010, inserted "in print or electronically" in the first sentence of subsection (a).

PART 6

DEFAULT

Subpart 1

Default and Enforcement of Security Interest

11-9-601. Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.

JUDICIAL DECISIONS

Analysis

General Consideration

Filing suit after repossession without first disposing of collateral.

Trial court did not err in granting summary judgment to a bank, a secured creditor, that brought an action for money judgment on a note while holding the collateral pledged by a corporation and an individual because O.C.G.A. §§ 11-9-601(c) and 11-9-609(a)(1) allowed a secured creditor in possession of a debtor's collateral to employ a number of different remedial steps until the debt was satisfied. Okefenokee Aircraft, Inc. v. Primesouth Bank, 296 Ga. App. 782, 676 S.E.2d 394 (2009).

Default

Pre-petition enforcement under Georgia law of an assignment of rents from a hotel's operation is not essential to the existence of a post-petition lien under 11 U.S.C. § 552(b)(2). In re Resort Inns, Inc., No. 04-41721, 2004 Bankr. LEXIS 1580 (Bankr. S.D. Ga. Aug. 30, 2004).

Default found. — Summary judgment was properly entered for a credit union on an owner's claim for wrongful possession as the owner defaulted on the owner's agreement with the credit union by failing to pay the storage fees for the car, which resulted in a garageman's lien; under O.C.G.A. § 11-9-601(a), as the owner was in default, the credit union could, pursuant to O.C.G.A. § 11-9-609(a), take possession of the collateral, and under O.C.G.A. § 11-9-610, the credit union could sell it. Endsley v. Robins Fed. Credit Union, 267 Ga. App. 512, 600 S.E.2d 441 (2004).

11-9-609. Secured party's right to take possession after default.

JUDICIAL DECISIONS

Analysis

General Consideration

Possession proper. — Summary judgment was properly entered for a credit union on an owner's claim for wrongful possession as the owner defaulted on the owner's agreement with the credit union by failing to pay the storage fees for the car, which resulted in a garageman's lien; under O.C.G.A. § 11-9-601(a), as the owner was in default, the credit union could, pursuant to O.C.G.A. § 11-9-609(a), take possession of the collateral, and under O.C.G.A. § 11-9-610, the credit union could sell it. Endsley v. Robins Fed. Credit Union, 267 Ga. App. 512, 600 S.E.2d 441 (2004).

Suing on contract after repossession but prior to selling collateral. Trial court did not err in granting summary judgment to a bank, a secured creditor, that brought an action for money judgment on a note while holding the collateral pledged by a corporation and an individual because O.C.G.A. §§ 11-9-601(c) and 11-9-609(a)(1) allowed a secured creditor in possession of a debtor's collateral to employ a number of different remedial steps until the debt was satisfied. Okefenokee Aircraft, Inc. v. Primesouth Bank, 296 Ga. App. 782, 676 S.E.2d 394 (2009).

Breach of the peace. Trial court erred in granting summary judgment in favor of a creditor as to whether it could be held vicariously liable for an independent contractor's acts in attempting to repossess a debtor's car because the creditor had a non-delegable statutory duty under O.C.G.A. § 11-9-609 to not breach the peace in repossessing the car, and if the contractor's attempt to repossess the car was in violation of the statute, the creditor would be chargeable with that conduct since it was done in violation of a duty imposed upon it by statute; there is nothing in § 11-9-609 that allows a secured party to avoid liability for a wrongful repossession by simply delegating this duty to an independent contractor. Lewis v. Nicholas Fin., Inc., 300 Ga. App. 888, 686 S.E.2d 468 (2009).

Self-Help Repossession

Threats by agents to defaulting party. — Threats to have plaintiffs arrested if they did not disclose the location of a vehicle they purchased to individuals who were hired to repossess the vehicle were insufficient by themselves to show that the individuals making the statements violated former O.C.G.A. § 11-9-503. Cornelius v. Nuvell Fin. Servs. Corp., 256 Ga. App. 171, 568 S.E.2d 82 (2002) (decided under former Code Section 11-9-503).

11-9-610. Disposition of collateral after default.

JUDICIAL DECISIONS

Analysis

General Consideration

Sale commercially reasonable. — Trial court did not err in concluding that a credit union's sale of a car was done in a commercially reasonable manner under O.C.G.A. § 11-9-610(b) where: (1) the car had been vandalized, including the stripping of its interior; (2) the car was not drivable; (3) a Texas credit union attempted to sell the car to its membership for eight weeks without results; (4) the credit union then contacted more than three body shops seeking a bid on the car; and (5) only one shop responded, and that bid was accepted. Endsley v. Robins Fed. Credit Union, 267 Ga. App. 512, 600 S.E.2d 441 (2004).

Because a bank utilized professionals in the industry to assist in the sale of the debtor's equipment, and it did not rush to dispose of the equipment, but ultimately sold it to the person whom the debtor and its guarantor contended would most likely tender the highest bid for the equipment, the sale was conducted in a commercially reasonable manner under O.C.G.A.

§§ 11-9-627(b) and 11-9-610. AKA Mgmt. v. Branch Banking & Trust Co., 275 Ga. App. 615, 621 S.E.2d 576 (2005).

Evidence of fair and reasonable value insufficient. — Documents in evidence showing only the sale price of the car were insufficient to establish the car's fair and reasonable value. No witness testified as to the basis for the opinion or opined that the appraised value of the car was the car's fair and reasonable value in that market at the time of the repossession or the sale. Versey v. Citizens Trust Bank, 306 Ga. App. 479, 702 S.E.2d 479 (2010).

Cited in Motors Acceptance Corp. v. Rozier, 278 Ga. 52, 597 S.E.2d 367 (2004).

Right to Deficiency Judgment

Deficiency admitted by failure to respond to requests to admissions. — In a finance corporation's suit to recover a deficiency balance on an installment sales contract for a log loader, the trial court properly granted the corporation summary judgment upon concluding that no genuine issues of material fact existed based on the defending trucking company and the company's president failing to answer the requests for admissions that were served simultaneously with the complaint. By failing to respond and never challenging the trial court's denial of the motion to withdraw the admissions filed by the trucking company and the company's president, the following allegations were deemed admitted: that true and correct copies of the relevant documents, including the demand for payment were received; that the president executed the installment sales contract and the guaranty; that the president failed to make payments thereunder; that the principal balance due under the contract and guaranty was $34,442.44 as of a certain date; and that the money was owed to the finance corporation. JJM Trucking, Inc. v. Caterpillar Fin. Servs. Corp., 295 Ga. App. 560, 672 S.E.2d 529 (2009).

11-9-611. Notification before disposition of collateral.

JUDICIAL DECISIONS

Analysis

Reasonable Notification of Sale

Reasonable Notification of Sale

Receipt of notice admitted by failure to respond to requests for admissions. — In a finance corporation's suit to recover a deficiency balance on an installment sales contract for a log loader, the trial court properly granted the corporation summary judgment upon concluding that no genuine issues of material fact existed based on the defending trucking company and the company's president failing to answer the requests for admissions that were served simultaneously with the complaint. By failing to respond and never challenging the trial court's denial of the motion to withdraw the admissions filed by the trucking company and the company's president, the following allegations were deemed admitted: that true and correct copies of the relevant documents, including the demand for payment were received; that the president executed the installment sales contract and the guaranty; that the president failed to make payments thereunder; that the principal balance due under the contract and guaranty was $34,442.44 as of a certain date; and that the money was owed to the finance corporation. JJM Trucking, Inc. v. Caterpillar Fin. Servs. Corp., 295 Ga. App. 560, 672 S.E.2d 529 (2009).

11-9-615. Application of proceeds of disposition; liability for deficiency and right to surplus.

JUDICIAL DECISIONS

Cited in Motors Acceptance Corp. v. Rozier, 278 Ga. 52, 597 S.E.2d 367 (2004).

11-9-616. Explanation of calculation of surplus or deficiency.

JUDICIAL DECISIONS

Deficiency admitted by failure to respond to requests for admissions. — In a finance corporation's suit to recover a deficiency balance on an installment sales contract for a log loader, the trial court properly granted the corporation summary judgment upon concluding that no genuine issues of material fact existed based on the defending trucking company and the company's president failing to answer the requests for admissions that were served simultaneously with the complaint. By failing to respond and never challenging the trial court's denial of the motion to withdraw the admissions filed by the trucking company and the company's president, the following allegations were deemed admitted: that true and correct copies of the relevant documents, including the demand for payment were received; that the president executed the installment sales contract and the guaranty; that the president failed to make payments thereunder; that the principal balance due under the contract and guaranty was $34,442.44 as of a certain date; and that the money was owed to the finance corporation. JJM Trucking, Inc. v. Caterpillar Fin. Servs. Corp., 295 Ga. App. 560, 672 S.E.2d 529 (2009).

11-9-617. Rights of transferee of collateral.

JUDICIAL DECISIONS

Termination of debtor's ownership interest. — Where a debtor's vehicle was part of the debtor's bankruptcy estate under Georgia law, return of the same was proper despite the creditor's objections, as ownership remained with the debtor until the creditor disposed of or elected to retain the collateral in accordance with the procedures of the Georgia Uniform Commercial Code. Motors Acceptance Corp. v. Rozier, 278 Ga. 52, 597 S.E.2d 367 (2004).

11-9-619. Transfer of record or legal title.

JUDICIAL DECISIONS

Cited in Motors Acceptance Corp. v. Rozier, 278 Ga. 52, 597 S.E.2d 367 (2004).

11-9-623. Right to redeem collateral.

JUDICIAL DECISIONS

Bankruptcy. — Chapter 13 debtor's equipment and furnishings repossessed pre-petition by a creditor remained property of the estate and rightfully subject to turnover pursuant to 11 U.S.C. § 542; the debtor could regain possession of the collateral that had been repossessed by redeeming the collateral pursuant to O.C.G.A. § 11-9-623. Dierkes v. Crawford Orthodontic Care, P.C. (In re Dierkes), No. 05-60983-MGD, 2005 Bankr. LEXIS 485 (Bankr. N.D. Ga. Feb. 15, 2005).

Cited in Motors Acceptance Corp. v. Rozier, 278 Ga. 52, 597 S.E.2d 367 (2004).

Subpart 2

Noncompliance with Article

11-9-625. Remedies for secured party's failure to comply with article.

JUDICIAL DECISIONS

State remedy precludes federal due process claim. — Because Georgia provided a remedy for improper repossession pursuant to O.C.G.A. § 11-9-625, a former arrestee, who claimed that police officers interfered with the arrestee's possessory interests in a vehicle at the time of the arrest, had no federal due process claim with respect to the repossession of the vehicle. Carroll v. Henry County, 336 B.R. 578 (N.D. Ga. 2006).

Judicial estoppel barred debtor's claim for damages. — Debtor was judicially estopped from pursuing the debtor's claim for damages under O.C.G.A. § 11-9-625 arising from a company's sale of the debtor's car following the car's repossession because any recovery would not inure to the benefit of the debtor's creditors, who were not fully compensated when a bankruptcy court discharged the debtor's debts; the debtor's claim that the company sold the debtor's car for an unreasonably low price arose at least two years before the debtor filed for bankruptcy protection, and because the cause of action accrued prior to the debtor's commencement of the debtor's bankruptcy action, the debtor was required to disclose the car in the debtor's schedule of assets to be included as property of the bankruptcy estate under 11 U.S.C. § 541. Sevostiyanova v. Tempest Recovery Servs., 307 Ga. App. 868, 705 S.E.2d 878 (2011).

Cited in Motors Acceptance Corp. v. Rozier, 278 Ga. 52, 597 S.E.2d 367 (2004).

11-9-626. Action in which deficiency or surplus is in issue.

Law reviews. — For article, "Georgia Foreclosure Confirmation Proceedings in Today's Recessionary Real Estate World: Back to the Future," see 16 (No. 4) Ga. St. B.J. 11 (2010).

11-9-627. Determination of whether conduct was commercially reasonable.

JUDICIAL DECISIONS

ANALYSIS

COMMERCIAL REASONABLENESS OF DISPOSITION

Commercial Reasonableness of Disposition

Commercially reasonable disposition required.

Because a bank utilized professionals in the industry to assist in the sale of the debtor's equipment, and it did not rush to dispose of the equipment, but ultimately sold it to the person whom the debtor and its guarantor contended would most likely tender the highest bid for the equipment, said sale was conducted in a commercially reasonable manner under O.C.G.A. §§ 11-9-627(b) and 11-9-610. AKA Mgmt. v. Branch Banking & Trust Co., 275 Ga. App. 615, 621 S.E.2d 576 (2005).

Evidence of car's fair and reasonable value insufficient. — Documents in evidence showing only the sale price of the car were insufficient to establish the car's fair and reasonable value. No witness testified as to the basis for the opinion or opined that the appraised value of the car was the car's fair and reasonable value in that market at the time of the repossession or the sale. Versey v. Citizens Trust Bank, 306 Ga. App. 479, 702 S.E.2d 479 (2010).